UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 05-44481
- -x
In the Matter of:

DELPHI CORPORATION,

Debtor.

- -x

United States Bankruptcy Court
One Bowling Green
New York, New York

July 19, 2006
10:08 AM

B E F O R E:
HON. ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

HEARING re Motion for Relief from Automatic Stay Filed by
Petitioners, Mary P. O'Neill and Liam P. O'Neill

HEARING re Motion of the Offshore Group Pursuant to Bankruptcy Code Sections 362(d)(1) and 553 for Order Lifting the Automatic Stay to Permit the Offshore Group to Exercise Right of Setoff

HEARING re Motion of BorgWarner Turbo Systems Inc. for Relief from Automatic Stay to Liquidate Setoff and Recoupment Claims Against the Debtors

HEARING re Motion of Ericka S. Parker, Chapter 7 Trustee, Seeking Relief from the Automatic Stay to Allow Her to Continue Asserting Counterclaims in Pending Litigation Being Prosecuted by the Debtor

HEARING re First Interim Fee Application of Howard & Howard Attorneys, P.C., Intellectual Property Counsel to Debtors, for Interim Allowance of Compensation and Reimbursement of Expenses for the Period October 8, 2005 Through January 31, 2006

HEARING re First and Final Application of Ernst & Young, LLP, as Sarbanes-Oxley, Valuation and Tax Services Providers for the Debtors, for Allowance and Payment of Compensation for Professional Services and Reimbursement of Actual and Necessary Expenses

HEARING re First Interim Application of Quinn Emanuel Urquhart Oliver & Hedges, LLP, Special Litigation Counsel to the Debtors-in-Possession for Compensation and Reimbursement of Expenses

HEARING re First Application of Cadwalader, Wickersham and Taft LLP as Attorneys for the Debtors for Interim Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred From October 10, 2005 Through January 31, 2006

HEARING re First Application of Togut, Segal & Segal LLP for an Allowance of Interim Compensation for Services Rendered as Conflicts Counsel for the Debtors for the Period October 8, 2005 Through January 31, 2006

HEARING re First Interim Application of Dickinson Wright PLLC for Order Authorizing and Approving Compensation for Services Rendered From January 13, 2006 Through January 31, 2006

HEARING re First Interim Application for Allowance of Compensation and Reimbursement of Expense Incurred by FTI Consulting, Inc. as Restructuring and Financial Advisor to the Debtors for the Period October 8, 2005 Through January 31, 2006

HEARING re First Interim Application of Groom Law Group, Chartered, As Special Employee Benefits Counsel for the Debtors, Seeking Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred From October 8, 2005 Through January 31, 2006

HEARING re First Application of Shearman & Sterling LLP, as

Special Counsel to the Debtors, for Allowance of Interim Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred From October 8, 2005 Through January 31, 2006

HEARING re First Interim Application of Thompson Hine LLP as Special Counsel for Debtors for Interim Court Approval, Allowance and Payment of Compensation for Services Rendered and Expenses Advanced From October 8, 2005 Through January 31, 2006

HEARING re First Interim Application of O'Melveny & Myers LLP for Order Authorizing and Approving Compensation and Reimbursement of Expenses

HEARING re First Interim Application for Compensation and Reimbursement of Expenses of Warner Stevens, L.L.P., as Conflicts Counsel to the Official Committee of Unsecured Creditors for the Period of November 10, 2005 Through January 31, 2006

HEARING re First Interim Application for Allowance of Fees and Expenses of Deloitte & Touche LLP as Independent Auditors and Accountants to the Debtors for the Period From October 8, 2005 Through January 31, 2006

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2 HEARING re First Interim Application of Butzel Long, P.C.,
3 Commercial and Litigation Counsel to Debtors and Debtors-in-
4 Possession, for Allowance and Payment of Compensation and
5 Reimbursement of Expenses for the Period From October 8, 2005
6 Through January 31, 2006 under U.S.C. Sections 330 and 331
7
8 HEARING re First Interim Application for Approval of
9 Compensation and Reimbursement of Expenses of Price, Heneveld,
10 Cooper, DeWitt & Litton, LLP, Intellectual Property Counsel to
11 the Debtors, for Services Rendered From October 9, 2005 Through
12 January 31, 2006
13
14 HEARING re First Interim Fee Application of Jaeckle Fleischmann
15 & Mugel, LLP for Allowance of Compensation for Services
16 Rendered and Reimbursement of Expenses
17
18 HEARING re First Interim Application of Banner & Witcoff, Ltd.,
19 Intellectual Property Counsel to Delphi Corporation, Seeking
20 Allowance and Payment of Interim Compensation and Reimbursement
21 of Expenses Under 11 U.S.C. Sections 330 and 331
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2 HEARING re First Application of KPMG LLP, as Tax and
3 Transaction Services Advisors for the Debtors, for Interim

Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred From October 8, 2005 Through January 31, 2006

HEARING re Revised First Interim Application of Covington & Burling, Foreign Trade and Special Corporate Committee Legal Counsel to the Debtors and Debtors-in-Possession, for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Period From October 8, 2005 Through January 31, 2006

HEARING re First Interim Application for Cantor Colburn LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Pursuant to 11 U.S.C. Sections 330, 331

HEARING re First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses Pursuant to 11 U.S.C. 328, 330 and 331

HEARING re First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP, Special Regulatory Counsel for the Audit Committee of the Board of Directors of Delphi Corporation, for Allowance of Compensation for Services Rendered and Expenses Incurred From October 8, 2005 Through January 31, 2006-07-20

HEARING re first Interim Application of Rothschild Inc. for Compensation and Reimbursement of Expenses

HEARING re First Interim Application for Approval of Compensation and Reimbursement of Expenses of Rader, Fishman & Grauer PLLC, Intellectual Property Counsel to Debtors, for Services Rendered From October 8, 2005 Through January 31, 2006

HEARING re First Interim Application of Jefferies & Company, Inc., as Investment Banker to the Official Committee of Unsecured Creditors for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred for the Period October 18, 2005 Through January 31, 2006.

HEARING re First Fee and Expense Application of Latham & Watkins LLP as Counsel to the Official Committee of Unsecured Creditors

HEARING re Firast Interim Application of Mesirow Financial Consulting, LLC for Allowance of Compensation and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured Creditor for the Period From October 19, 2005 Through January 31

HEARING re First Fee and Expense Application of Steven Hall & Partners, LLC as Compensation and Employment Agreement Advisor for the Official Committee of Unsecured Creditors

HEARING re First Interim Application of Skadden, Arps, Slate,

Meagher & Flom LLP and Affiliates, Counsel to the Debtors-in-Possession, Seeking Allowance and Payment of Interim Compensation and Reimbursement of Expenses Under 11 U.S.C. Sections 330 and 331

HEARING re First Interim Fee Application of Blake, Cassels & Graydon LLP as Canadian Counsel for Debtors for Allowance and Payment of Interim Compensation and Reimbursement of Expenses Under 11 U.S.C. Sections 330 and 331

HEARING re Fee Committee's Application for an Order Authorizing Retention of Legal Cost Control as Fee and Expense Analyst, Nunc Pro Tunc to June 1, 2006, Pursuant to Sections 327(A) and 328 of the Bankruptcy Code

HEARING re Motion for Order Under 11 U.S.C. Section 363(b) and Federal Rules of Bankruptcy Procedures 6004 Authorizing the Debtors to Enter Into an Agreement with A.T. Kearney, Inc.

HEARING re Motion to Implement Final Trading Order in Respect of Acquisition of Stock by Harbinger Capital Partners Master Fund I, Ltd.

HEARING re Motion of H.E. Services Company and Robert Backie, Majority Shareholder for Relief from the Automatic Stay Under Section 362 of the Bankruptcy Code

- 11 -

HEARING re Motion for Orders Under 11 U.S.C. Sections 363 and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006 and 9014 (A) Approving (i) Bidding Procedures; (ii) Certain Bid Protections; (iii) Form and Manner of Sale Notices; and (iv) Sale Hearing Date and (B) Authorizing and Approving (i) Sale of Certain of Debtors' Assets Comprising Substantially All Assets of MobileAria, Inc. Free and Clear of Liens, Claims and Encumbrances; (ii) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (iii) Assumption of Certain Liabilities

HEARING re Supplement to KECP Motion Seeking Authority to: (A) Fix Second Half 2006 AIP Targets and Continue AIP Program and (B) Further Adjourn KECP Emergence Incentive Program Hearing

HEARING re Motion of NuTech Plastics Engineering, Inc. for Relief from the Automatic Stay in Order to Continue Pre-petition Breach-of-Contract Case Against Delphi Automotive Systems USA, L.L.C. and General Motors

HEARING re Summons and Notice of Pretrial Conference in an Adversary Proceeding

- 12 -

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P R O C E E D I N G S

THE COURT: Please be seated. Okay. Delphi?

MR. BUTLER: Your Honor, good morning. Jack Butler from Skadden, Arps, Slate, Meagher & Flom, LLP along with my partners, Al Hogan and Kayalyn Marafioti, here for the debtors' ninth omnibus hearing for July 2006.

Your Honor, we have filed an agenda for today's hearing. It has 42 matters on it, the substantial number of which have been adjourned to later dates, which I'll cover in a few minutes. With Your Honor's permission, we would follow the order of the agenda.

THE COURT: Okay. That's fine.

MR. BUTLER: And, Your Honor, the first matter on the agenda is the O'Neill lift-stay motion at Docket No. 2748 in which we understood from chambers that there's a bench ruling.

THE COURT: Right. I reviewed the insurance materials as well as the record of the oral argument at the last hearing on this matter which was at the last omnibus day. And I had some concerns based on what I thought I heard at the oral argument that perhaps the O'Neills were changing their request for relief in seeking relief beyond the insurance

policies themselves. It appears to me from reviewing the transcript that that's not the case. I don't know. Is their counsel here?

MS. HALL: Yes.

THE COURT: I just want to confirm that. You're looking just to the insurance, correct?

MS. HALL: (No audible response)

THE COURT: All right. And then, of course, we went through the issue as to what that means, given that the debtors have a self-insured retention supported by their own financial planning as set forth on the record of that hearing and also in connection with the Court's prior order approving the assumption of the insurance agreements. And it was clear to me that there would be if the O'Neills established liability, in effect, on the debtors' estate resulting from that given the SAR, although the affect would be indirect, it would still be real. I've also considered the fact that the debtors are still reviewing proofs of claim but that they have not, to date, informed me of any similar lawsuits to this one personal injury lawsuit, where the matter is, although not ready for trial, well developed.

In light of all of that, and in applying the relevant factors to this matter laid out by the Second Circuit in the Sonnax case, at 907 F.2d 1280, 1286 (2d Cir. 1990), which include whether relief would result in a partial or complete resolution of the issue, lack of any connection with or interference with the bankruptcy case, whether a specialized tribunal with necessary expertise has been established to hear the cause of action, where the debtors' insurer has assumed

full responsibility for a defense, in the interest of judicial economy and the expeditious and economical resolution of litigation, including whether the parties are ready for trial, and, finally, the impact of the stay and the balance of forums here, I concluded that the stay should be lifted to permit the conclusion of the litigation and again, on the condition that the recovery on the claim be limited to insurance proceeds.

The Court does not have jurisdiction to decide this personal injury action and, again, as I said before, the record doesn't reflect that there are any other actions of a similar nature. Certainly it doesn't reflect that there are a plethora of such actions that may require more collective dispute resolution mechanisms.

Secondly, again, the recovery is limited to insurance here and I, in these circumstances, weigh that more heavily than the indirect effect of a recovery upon the debtors' estate through the funding of the SAR.

Finally, I recognize that the plaintiff here is an individual that has suffered a personal injury. I don't know whether that will result in any ultimate judgment against the debtors, but balancing the harm to that person in proceeding to some form of recovery as against the debtors, particularly given the time that has elapsed since the filing date, I think the balance of harms, in this instance, weighs in favor of the O'Neills.

So, I will grant that relief and you should submit an order after running it by Mr. Butler to make sure it's consistent with my ruling and the representation that any recovery on the claim be limited to the insurance.

MR. BUTLER: Thank you, Your Honor. Your Honor, the next matters on the agenda, matters 2 and 3, one is the Offshore Group's lift-stay motion at Docket No. 2811 and number

3 is BorgWarner Turbo Systems, Inc. lift-stay motion at Docket No. 3218 and Mr. Berger is handling that on behalf of the debtors.

MR. BERGER: Good morning, Judge. Neil Berger, Togut, Segal and Segal. Number 2 is the Offshore Group motion for relief from the automatic stay to affect a setoff. Negotiations have been ongoing. For the last couple of weeks the delta between the bid and ask is efficiently small that I can say with confidence that I hope that in the next week or two to have to Mr. Rosenberg's office and the committee a proposed resolution. The principal at Offshore who is primarily responsible for making the business decision was out last week and this week and we'll hope to pick that up next week and, hopefully, when we come back on the August calendar, we'll be handing up a settlement agreement.

THE COURT: Okay.

MR. BERGER: We'll mark that one, rather, for adjournment.

THE COURT: Okay.

MR. BERGER: BorgWarner -- I'm pleased to report that the business representatives at Delphi and BorgWarner were able to negotiate a business resolution of this matter. This was BorgWarner seeking to liquidate its pre-petition warranty claim they have. It's a resolution of Your Honor's October 13, '05 first day order, final first day order, authorizing the debtors to honor the pre-petition customer programs. The warranty claim was liquidated in the approximate sum of 2.3 million dollars. As part of that negotiation, Your Honor, we were able to free up approximately 3.2 million dollars of account receivables coming in the debtors' way, so it was a double win for the debtors in this instance. While I was waiting for the

hearing to begin, I got an e-mail from Detroit confirming that the settlement agreement has been signed, fully negotiated, and we expect that within the week BorgWarner will withdraw this motion.

THE COURT: Okay.

MR. BERGER: Thank you, Judge.

THE COURT: Thank you.

MR. BUTLER: Your Honor, matter number 4 on the agenda is the Erica Parker lift-stay motion at Docket No. 3705. This is a request from a Chapter 7 trustee to seek relief from the automatic stay to allow her to continue asserting counterclaims in pending litigation being prosecuted by the

debtors and also to collect proceeds from Delphi if she's successful in her counterclaims.

We have been in continuing discussions with the Chapter 7 trustee, with Ms. Parker. We believe -- this is in, by the way, in connection with the Toledo Professional Temps, Inc. or Flex Techs Professionals Services, Inc., a filing in the United States Bankruptcy Court -- or, rather, district court now, for this particular matter, in the northern district of Ohio. We've been able to reach a resolution -- we hope will be a resolution with Ms. Parker. We're very close and we've not filed an objection formally at this point in time. We'd ask that this be put off to the next omnibus hearing on August 17th. We hope to have it resolved by that time. If not, we'll file an objection.

THE COURT: Okay.

MR. BUTLER: Thank you, Your Honor. Your Honor, the next group of matters, which are matters 5 through 34 represent the first fee application periods of the retained professionals in this case that are required by the courts interim compensation procedures order to file periodic fee

applications. The fee applications render a review by the joint fee review committee established by this Court and Your Honor may recall that the Court has entered a fourth supplemental interim procedures order at Docket No. 4545 that the request of the fee committee -- that accomplished a number

of matters. One, it put these applications off and consolidated them with the fee applications for the second fee application period for those to be considered at a combined hearing at the October 19th, 2006 omnibus hearing and also following a review by the fee committee -- it was the fee committee's recommendation that in the interim for the first two fee application periods that have the holdback that have been previously by the debtors. And Your Honor granted that relief in connection with the four supplement order.

So these matters would then be adjourned by the order to October 19th combined with the second fee application periods and subject to the review committee and their recommendations at that time.

THE COURT: Okay. Very well.

MR. BUTLER: Matter no. 36 on the agenda, Your Honor, is also a fee committee business. The fee committee has retained legal cost control as a fee and expense and filed an application nunc pro tunc for their retention to June 1st, 2006. This is at Docket No. 4117.

The fee committee has retained legal cost control to aid the committee in performing certain of its duties. There have been some discussions and the fee committee has obtained input from professionals regarding the scope of legal cost control, whether they're a full blown fee examiner or they're an analyst supporting the fee committee's work. That's being

reviewed by the fee committee and the fee committee asked to adjourn this application to the August 17th omnibus hearing while that matter is resolved.

THE COURT: Okay. Although it should be very clear. I did not contemplate a full blown fee examiner here and I view these types of services as being useful really only because of the software.

MR. BUTLER: Your Honor, I think the fee committee is trying to sort out given the volume of these applications, and Your Honor has some sense of the number of applications filed and their length and their complexity. I don't think anyone doubts the fact the fee committee needs support.

THE COURT: Oh, they definitely need support but I just -- I -- it should be tech support essentially. I mean, tech will have to know what they're reviewing but I don't want -- I want business people making the decisions, not some hired guy.

MR. BUTLER: Thank you, Your Honor.

THE COURT: By the way, I don't know if anyone from the U.S. Trustee is here, but it struck me that if the government is going to spend any money on the U.S. Trustee program, the best money it could spend would be a few hundred thousand dollars to develop its own software so that, for instance like this, who -- I don't particularly want to put out of business but they don't have to be doing what they're doing

if the government would develop its own software so that the U.S. Trustee would have those resources.

MR. BUTLER: Thank you, Your Honor. Your Honor, the next matter on the agenda is matter number 36. This is the debtors' motion authorizing the debtors under 363 to enter into an agreement with A.T. Kearney, Inc. essentially to examine --

help us analyze and negotiate and restructure various costs including, without limitation, the review and analysis of certain executory contracts.

A company of this size, a company with 28 billion dollars in annual revenue has lots of executory contracts. A fair portion of those are captured within the debtor entities as opposed to being in the non-debtor entities. And we had the opportunity to, in connection with the review of assumption or rejection of executory contracts, to systemically review all of those contracts, or at least those from which the company thinks they can generate cost savings. As the debtors reached out to A.T. Kearney to have them do this, they have helped in other cases which Mr. Shearman and general counsel and others have been involved. They have helped generate significant savings. The debtors believe that through the assistance that A.T. Kearney can provide here that we can generate perhaps 30 to 60 million worth of annual savings in this first round.

We have -- we believe that we could have retained these folks in the ordinary course of business but given the

size of the payment which is a fixed fee of 3.9 million dollars and a contingent fee of up to another 500,000 dollars in consultation with the creditors' committee and at the request of A.T. Kearney, we have sought to confirm our ability to use the state property under 363 for this purpose.

We've reviewed this retention application in detail with the creditors' committee. They support entry of the revised order which gives a level of review to the creditors' committee in connection with evaluating whether the contingent fee should or should not be paid and establishes mechanics for the committee's review of those matters. And if the committee is not satisfied, there is an alternative dispute resolution

mechanic and then ultimately the opportunity for the committee to object to the payment of the contingent fee here before the Court in a subsequent hearing.

Your Honor, I think that there is a -- this is one of those applications where I think from the debtors' perspective, there's nothing hopefully but upside here for the estates. We believe the savings will significantly exceed the expenditures in connection with this project that we wish to undertake. There are no objections to the relief requested. Unless Your Honor has any other questions, we'd ask that Your Honor enter the revised order.

THE COURT: Okay. Does anyone have anything to say on this motion? All right. I reviewed the revised order and

that appears fine to me. So, based on the vermins in the motion, as well as there being no objection, I'll approve it.

MR. BUTLER: Thank you, Your Honor. Your Honor, matter number 37 on today's agenda is the Harbinger Trading Motion at Docket No. 4576 which arises from a violation of the final trading order. My partner, Ms. Marafioti, has been handling this matter and will report to the Court on what we believe is a noncontested hearing.

MS. MARAFIOTI: Good morning, Your Honor.

THE COURT: Good morning. Kayalyn Marafioti for Delphi Corporation. This motion that was brought on by order to show cause, Your Honor, is to implement this Court's earlier order of January of this year that set forth certain notification procedures for substantial equity holders to either sell down or acquire new shares of stock of Delphi. We did serve the order to show cause in accordance with its terms, Your Honor.

You no doubt recall that the -- what I call the final NOL trading order entered in January does contain a fairly

intricate set of terms that requires advanced notice to the debtors and the Court in the event that a substantial equity holder either sells down or acquires new shares. And what happened in this instance is that by its own representation to us, Harbinger Capital Partners, Master Fund I, Ltd. did not comply with those pre-advanced notification terms of that order

before acquiring shares of stock in June of this year that took it over the threshold set by that NOL trading order. So, by June 5 of this year, Harbinger had acquired, I think, some 32,025,000 shares of stock of Delphi. And when Harbinger filed a Schedule 13D on June 12th, that's when the debtors first became aware of this and immediately contacted Harbinger to find out what was going on.

So since that time, we've tried to devise a means of enabling Harbinger to sell down the shares below the threshold that might impair Delphi's tax attributes and we've come up with a system that we think works. It's actually based on a private letter ruling of the Internal Revenue Service so we think it should be effective.

But, in essence, what this order would do if entered would be to require Harbinger to sell on the open market shares of stock such that it would fall below the threshold. To the extent that Harbinger made a profit on that, it would have to donate the profit to a charity that's qualified by the Internal Revenue Code and would have to afterwards give notice to us and to the Court that all of this has been accomplished. The order would reaffirm, in essence, what the January order already says, which is that these shares were acquired or essentially void avenicio -- the shares -- the acquisition was void avenicio.

THE COURT: The acquisition not the shares.

MS. MARAFIOTI: Yeah, the acquisition. No, we'd like to think the shares are still outstanding, Your Honor. But the acquisition was void avenicio. It would further provide that Harbinger is not to engage in this type of activity obviously in the future. And we think that it would, in essence, preserve the integrity of the original order and also preserve a valuable asset of the debtors' estate.

So, with Harbinger's consent and not seeing any other objections by any party in interest, we would ask that the Court enter the order.

THE COURT: And I'm not -- have I seen the final version of that?

MS. MARAFIOTI: I believe you have, Your Honor. It's part of the package that came down with the order to show cause.

THE COURT: Oh, okay. So it hasn't been changed since then?

MS. MARAFIOTI: No, it has not.

THE COURT: All right. Very well. I will approve -- oh, I'm sorry.

MR. EATON: Just a point of clarification, Your Honor.

THE COURT: Okay.

MR. EATON: Your Honor, Frank Eaton on behalf of Harbinger. We agree with just about everything that Ms.

Marafioti has stated. Certainly it's an agreed order. However, our client does not acknowledge that it was a violation of the trading order. We contend that we did not receive actual notice of the trading order.

THE COURT: Okay.

MR. EATON: Thank you.

THE COURT: That's fine.

MS. MARAFIOTI: For the record, Your Honor, our claims agent believes that notice was given but in any event constructive notice was had. So now that we've agreed upon it --

THE COURT: But this is all a dead issue so it doesn't need to be decided.

MS. MARAFIOTI: -- we can resolve it. That's right. Thank you.

THE COURT: Okay.

MR. BUTLER: Your Honor, that takes us to the contested docket. Before the contested docket, I do have -- even though I suggested to Your Honor that we would follow the order of the agenda, is counsel for L&W Engineering present in the courtroom? I was trying to save them some time because of the adversary proceeding status conference.

THE COURT: But my clerk is telling me that L&W's counsel had arranged to be participating telephonically and she just told me that there was some problem with court call, so

they may not either be able to hear you or speak to us, so we should --

MR. BUTLER: Not a problem. I was just trying to see if they were in the courtroom to save them some time. But they would come later in the agenda anyway at some point, Your Honor.

THE COURT: Okay. Very well.

MR. BUTLER: Continuing then with the contested docket, the first matter is Docket No. -- or matter number 38 on the agenda, which is the H.E. Services Company lift-stay motion at Docket No. 2705. Your Honor will recall that this

was dealt with at the last omnibus hearing on a preliminary hearing basis but that the Court adjourned the motion for final hearing at today's omnibus hearing because H.E. Services argued for the first time at the prior hearing that the discrimination aspect of its commercial litigation suit amounted to a personal injury tort claim under 28 U.S.C. 157(b)(5) and thus they argued the bankruptcy court did not have jurisdiction to adjudicate this claim.

The Court also, because this had been raised for the first time, granted leave to the debtors if the debtors chose to -- didn't direct us to but gave us leave to file a supplemental objection on that limited issue, which we did. We did file the supplemental objection at Docket No. 4532. And I'm not going to argue that, Your Honor, here. I think the

objection is clear on its face. We've pointed to the cases in the Second Circuit which make it clear that this does not fall within 137(b)(5) here in the Second Circuit and also we distinguished the case is cited by the movant. So we have nothing further, Your Honor, on this matter.

THE COURT: Okay.

MR. MASTROMARCO: Thank you, Your Honor. Victor Mastromarco on behalf of Mr. Backie and H.E. Services. And I'd like to indicate in response to their position set forth in their brief that there's no mention of the fact either here today or in their brief that Mr. Backie is an individual plaintiff in the case. H.E. Services is also seeking that same protection under the U.S. Constitution Section 1981. And, again, H.E. Services is an individual as defined under Section 1981 in the case law.

The cases that are cited by the debtor in their brief to the Court invite the Court to determine -- well,

essentially, there's a narrow issue for the Court, as I see it. And that is, whether or not 157(b)(5) is to be given a narrow construction or a broad construction or somewhere in between. The defendants have been taking the position, essentially citing two very old cases, that the Court should narrowly construe 157(b)(5) and to do so, the Court would have to strain and change the plain language of 157(b)(5). The defendants want this Court to include the words bodily injury into the

statute. And it's not included. And I'm reading the 157(b)(5). In pertinent part it reads, "the district court shall order that personal injury tort and wrongful death claims shall be tried in the district in which the bankruptcy case is pending or in the district court in the district where the claim arose as determined by the district court where the bankruptcy case is pending."

The narrow approach, as I indicated, would require this Court to construe that statute as putting words in there that, strictly construed, it doesn't have. And, certainly, Congress, Your Honor, knew how to say the words personal bodily injury when it wanted to. As an example, see 11 U.S.C. Section 522(d)(1).

This also -- this type of approach invites the Court to interpret pleadings that were drafted, and certainly in this case, before this proceeding was filed. Again, the case is cited by the defendants. There's only two of them that are cited in their brief. This Vinci case, V-I-N-C-I, versus Town of Carmel and there was another case, too. It was the Cohen case. These cases are seventeen years old and have been heavily criticized by the Circuit.

As an example, in the case that I cited to the Court during the last omnibus hearing was the In Re Ice Cream Liquidation, Inc. case and in that particular case, which, by

the way, is the only case that's been cited to the Court where

Section 1981 is being discussed, in that particular case, certainly the Court took a middle ground in reviewing these things. And, basically, the Court talked about how some of the Circuits have taken this position of a broad construction. The Court didn't think that that was necessarily the way to go but also the Court looked at the narrow construction and rejected that out of hand. I would note that what's important in the In re Ice Cream Liquidation case is if 157(b)(5) is applicable, then this Court does not have jurisdiction to make any decisions as to the discrimination portion of the complaint. Certainly, and I would just read from that case just briefly here, if I could, Your Honor, "here it is not necessary for this Court to determine whether it has any jurisdiction" -- and italicized "any" -- "under Section 157(b)(5) over that portion of the claim objection dealing with the sexual harassment successor liability claim or whether such jurisdiction would be core or noncore under Section 157(b)(2). That is because plaintiff's arguments for relief from stay and abstention only grow stronger as the Court's jurisdiction in respect of the sexual harassment successor liability claim is diminished. As will be apparent from discussion below, the key consideration here is that this Court has no" -- and italicized -- "no jurisdiction to try that portion of the claim objection which relates to the sexual harassment successor liability claim." And, Your Honor, that's a 2002 opinion. And that's how the

Courts have interpreted 157(b)(5), not based on some eighteen year old case on a bankruptcy that was filed in 1981.

THE COURT: What was the section you quoted to me?

Didn't you say 1122? I just didn't hear it.

MR. MASTROMARCO: Just a moment. If I wrote it down wrong, I apologize. I believe it was 11 U.S.C. 522 --

THE COURT: 522.

MR. MASTROMARCO: --(d)(1).

THE COURT: Okay.

MR. MASTROMARCO: And those words appear in that particular section. I mean, certainly, again --

THE COURT: No, no. I just wanted to make sure I heard it. I thought I heard you incorrectly.

MR. MASTROMARCO: We ask for strict construction of the statute, Your Honor.

THE COURT: All right. I have in front of me a motion by H.E. Services and Robert Backie for relief from the automatic stay to pursue in the Eastern District of Michigan their pending pre-petition litigation alleging among other things breach of contract, promissory estoppel on this representation and civil rights violations.

As with every request to obtain relief from the automatic stay in respect of an unsecured claim, including this here, to pursue pre-petition litigation, the Court considers those factors laid out by the Second Circuit. In its Sonnax

case, 907 F.2d 1280 at 1286 (2d. Cir. 1990) that are relevant to determine whether there is a basis even with respect to an unsecured claim to permit the liquidation of that claim notwithstanding the automatic stay. Based on my review of the papers and the factors, I conclude that the stay should not be lifted. The relevant factors here are whether relief would result in a partial or complete resolution of the issues, lack of any connection with or interference with the bankruptcy case whether a specialized tribunal with necessary expertise has been established to hear the cause of action, whether the

debtors' insurer has assumed full responsibility for the defense, whether the action primarily involves third parties, the interest of judicial economy and the expeditious and economical resolution of litigation, whether the parties are ready for trial in the other proceeding and the impact of the stay on the parties and the balance of harms. And, by the parties, I include not only the debtors but their other unsecured creditors.

The litigation is not, based on my understanding, particularly well developed in the Michigan court. Litigation, importantly, does not appear to be covered by insurance so recovery would be -- you know, if there's a ruling favorable to the plaintiffs against the debtors' estate, and I believe that at this stage is the case, it is not therefore appropriate to force the debtors to engage in such litigation to liquidate a

claim well in advance of a general claim liquidation procedures in the case. As noted by Mr. Butler this morning, for the first time at oral argument at the preliminary hearing on this matter, counsel for the movants raised the issue that the Court, if the litigation were ultimately to be tried in an adversary proceeding, would not have jurisdiction under 28 U.S.C. 157(b)(2)(0) which provides that personal injury, tort or wrongful death claim are solely from the district court's determination. As I noted at that hearing, if that fact or if that assertion were true as a matter of law, that would be an additional factor, although not dispositive, in the Sonnax analysis. It would not be dispositive because the Courts have recognized that notwithstanding Section 157(b)(2)(0) the bankruptcy court may generally deal in the preliminary stages with personal injury claims. However, it would be a significant factor in that this Court could not ultimately

determine the matter if it were to be litigated in an adversary proceeding.

However, based on the supplemental briefs filed on the matter as well as the Court's own research, I conclude that the law in the Southern District of New York in respect of this type of claim is contrary to the movants' contention. While this is not a dispositive ruling on the Section 157(b)(2)(0) issue, it appears to me that the law in the Southern District, including at the district court level, as well as a proper

reading of the statute, would limit the statute so that it would modify to this type of commercial dispute. See, in addition to the cases cited by the debtors in their supplemental memorandum, In re Finley, 194 B.R. 728, 734 (S.D.N.Y. 1995) and In re Cohen 107 B.R. 453, 455 (S.D.N.Y. 1989).

So I'll deny the motion at this time and you can submit an order to that effect, Mr. Butler, after running it by counsel.

MR. BUTLER: Thank you, Your Honor.

THE COURT: Okay.

MR. BUTLER: Your Honor, the next matter on the agenda is matter number 39. This is the MobileAria Sale motion at Docket No. 4040.

Your Honor, we are here today to deal with the Court's approval on that request, the Court's approval for the sale of substantially all the assets of MobileAria, Inc., one of the debtors in these Chapter 11 cases, to Wireless Matrix U.S.A., Inc.

As Your Honor may recall, we were here at a prior hearing in getting approval of bid procedures. We got approval of bid procedures with respect to an asset sale and purchase agreement with Wireless Matrix U.S.A., Inc. which was the

stalking horse in connection with this transaction. And there were procedures that were established by the Court at the prior

omnibus hearing to set forth a competitive bidding process that would move forward to determine the highest or otherwise best bid for this particular group of assets and then we would come back to the Court today for a final sale hearing.

Your Honor, the bidding procedures order was entered by the Court on June 22nd, 2006. It set the stage for the competitive bidding process and for the auction of substantially all of MobileAria's assets. That order has been docketed at Docket No. 4328. There was an element of that order that required the debtors to provide parties in interest with notice of the sale, notice of cure amounts, notice of MobileAria's intent to assume and assign contracts and establish certain procedures and deadlines with respect to each of those subjects. And the debtors complied with the terms of that order, provided all the required notices in connection with that and also served notice on all known creditors of MobileAria.

Well, I've got some information to report to the Court regarding the competitive bidding process and the selection of Wireless Matrix as the ultimate successful bidder here. I do want to advise the Court at the outset of this hearing that we have been able to resolve all of the objections that have been filed.

THE COURT: Okay.

MR. BUTLER: So there is a resolution to each of the

objections. I'll walk through them in a few minutes.

THE COURT: Okay.

MR. BUTLER: But those all have been resolved in one manner or another. Now, Your Honor, initially, pursuant to the bidding procedures order, we served on all non-debtor parties to the assumed contracts a notice that identified Wireless Matrix as the party that would be assigned, mobilized right title and interest on the assumed contracts. And that was subject to the completion of the auction that was to occur.

We also -- so we provided that notice at that time and so we dealt both with that and with cure procedures and a variety of other issues relating to the contracts that were the subject of the assets of the auction and of the sale. And we then proceeded to conduct the auction.

The auction was conducted and in connection with the bidding process, there were competing bids that were sought. There were competing bids received. At Road, Inc. was the other bidder that submitted a competitive bid on June 28th and in evaluating that bid, MobileAria's board of directors met on June 30th and determined that that bid was a qualified bid under the bidding procedures order Your Honor had entered and that set the stage, Your Honor, for an auction. And, therefore, there was an auction held on July 6th in our New York offices here. We had representatives of At Road and Wireless Matrix, the two bidders, the creditors' committee and

the agent for the pre-petition secured lenders. Counsel for the equity committee was also invited to participate but elected not to participate in this particular auction.

MobileAria was represented at the auction by its president, Mr. Lind. Individuals from the debtors' -- from Delphi's MNA department in Troy, Page Mill Partners, which was the investment banker, and MobileAria's corporate counsel, DLA, Piper, Rudnick, Gray and Cary, as well as Skadden.

Your Honor, the resulting bid process which began at

10 10 a.m. and lasted until about 8:30 in the evening, we have
11 actually as exhibits for this hearing the transcript of that
12 auction, resulted in the bid being increased from approximately
13 six million dollars to 11.2 million dollars -- actually, it was
14 11.4 million dollars, with respect to Crossroads (sic), and
15 Wireless Matrix' final bid was 11.2 million dollars. The
16 remaining terms were substantially similar and in the debtors'
17 judgment provided substantially equivalent economic value and
18 therefore, at the conclusion of the auction there was a
19 difference between the two bids of 200,000 dollars.
20 Following the auction, MobileAria's board of
21 directors met telephonically with its financial advisors and
22 after reviewing the bids, chose At Road as the successful
23 bidder and selected unanimously Wireless Matrix last bid as the
24 alternative bid. And so, after the auction process, we then
25 sent out notices with respect to At Road being the successful

1 bidder and went through the whole assumption process,
2 notification and so forth.
3 That led to, among other things, the filing of an
4 objection this week from Verizon Services Corporation, which
5 objected on a number of grounds to the sale, including raising
6 issues of adequate assurance and future performance by the
7 successful bidder. And there were a series of negotiations
8 which I won't go into detail about in connection with those
9 matters which we think were resolved to Verizon's satisfaction,
10 but at the end of the day -- last evening, and it really was at
11 the end of the day, about 10:00 last evening, we received a
12 termination of At Roadscontract to purchase the agreement from
13 At Road who indicated that pursuant to their agreement, they
14 believed they had the ability to terminate on account of the
15 Verizon objection. And while the debtors are reserving all

their rights and remedies with respect to that termination, we're not agreeing it was proper, the debtors nevertheless moved immediately to deal with the alternative bidder, with Wireless Matrix, which was original stalking horse, and achieved a resolution of matters between Verizon and Wireless Matrix about 2:30 this morning so that we are prepared to go forward today with the sale to Wireless Matrix. That sale is acceptable to Verizon. There is a revised form of order that we have provided to the Court in connection with the sale. We are in the process of revising the purchase agreement with

respect to Wireless Matrix to, simply, from a mechanical perspective, change the stalking horse agreement to include the terms and conditions that were included in the auction transcript that both parties agreed to with respect to the contract. It requires some revision to the contract but it is, in my view, a ministerial action to simply take the agreements and insert them in. But the parties didn't get that done between 2:30 this morning and the time of this hearing.

So, assuming Your Honor is prepared to go forward with this transaction and approve it, counsel to the debtor and to Wireless Matrix would like to be able to finalize that agreement and finalize the order. Verizon wants to take one more look at the form of order and we'd submit it to Your Honor tomorrow or Friday.

THE COURT: Okay. So the Wireless Matrix agreement is for the 11.2 million?

MR. BUTLER: It's for 11.2 and they will get a credit for the breakup fee under the bidding procedures order because there was a breakup fee that they were entitled to. We picked somebody else so they're going to get from the 11.2 million purchase price a credit of something just shy of 200,000 dollars as an additional credit for the breakup fee.

THE COURT: Because the 11.4 million figure for At Road would have had to have had the breakup fee deducted from it?

MR. BUTLER: Correct.

THE COURT: Okay.

MR. BUTLER: And they're entitled to the breakup fee because they were not chosen as the successful bidder. And so they'll get that credit in connection with it. So, it will be 11.2 minus the breakup fee. That still is a very substantial enhancement over the agreement originally agreed to with the debtors.

THE COURT: Well, it's not because they were not chosen as the successful bidder. It's because that was how the bidding actually played out.

MR. BUTLER: Yes, Your Honor.

THE COURT: It wasn't really an 11.4 million net to the estate. It was 11.2 million.

MR. BUTLER: Correct, Your Honor.

THE COURT: Okay. All right.

MR. BUTLER: Your Honor, with respect to the resolution with Verizon, unless counsel for Verizon wants me to go through in detail on the record, I'm going to rely on paragraph 43 of the revised order which provides the understandings that have been reached with respect to Verizon.

Verizon had a number of concerns and, without going through all the details, briefly summarize them because I think they can be summarized briefly. First, there are some issues associated with alleged errors in billing that have occurred

with respect to historical billing. Those group of claims have

been limited to 270,000 dollars, the claims that they can make with respect to that. That's for the debtors' account and we'll have to deal with that issue and there's a mechanism for us to resolve those matters.

THE COURT: So there's a cap on what the cure claim would be?

MR. BUTLER: For that bucket of claims.

THE COURT: Okay.

MR. BUTLER: And that would be 700,000 dollars and that would be an administrative claim that we would deal with.

The second set of claims deals with certain repairs and other work due under the Verizon contract that Verizon argues MobileAria has not completed. And Wireless Matrix has agreed that if MobileAria doesn't complete that work, then Wireless Matrix would be obligated to complete it and Wireless Matrix would be entitled to its reasonable out-of-pocket costs and expenses attributable to the performance of that work as outlined in the order.

We've agreed and MobileAria has agreed to escrow 100,000 dollars to pay those administrative -- those estimated costs and Wireless Matrix would be entitled to submit invoices subject to our ability to dispute them. But those are the administrative expenses as well.

THE COURT: Okay.

MR. BUTLER: The third piece of this is that there may be other defaults that Verizon has asserted that are not completely liquidated at this point with respect to other matters under the agreement with Verizon. And there is an agreement that Verizon can assert those claims as administrative claims up to a maximum of one million dollars within one year from the date of closing. So, there's a one year period for them to be comfortable that there are no other

defaults under the contract that's being assumed and there's a cap of one million dollars of our administrative exposure.

THE COURT: And this contract with Verizon was a post-petition contract, right?

MR. BUTLER: No. It was, Your Honor, a pre-petition that was being assumed as part of this. And they're alleging, among other things, that there are defaults and other matters that are subject to curing.

THE COURT: Okay.

MR. BUTLER: The other thing I think is very important here which also guided the debtors in negotiating this is that Verizon has in this contract the ability to terminate for convenience with 180-day notice. It is undisputed between the parties that Verizon contracts are a very important assets of the group of assets being sold and both purchasers had the ability to terminate their purchase agreement if in fact Verizon -- they had -- there's some

standards I won't go into, but, basically, the basic position would be that they had knowledge that Verizon had an intent to terminate as of the time of closing. And that's, by the way, the assertion that At Road made the connection with terminating its agreement. They believed that notwithstanding Verizon's settlement and Verizon's agreement to go forward that there was still that intention. And because of the importance of the Verizon contract of the MobileAria assets and the sale and because we don't believe the sale could be completed without Verizon going forward and because of their right to actually give a notice to terminate on 180-day notice, we thought there was a commercial resolution of all this that was necessary.

THE COURT: So Verizon has represented that it does not intend to terminate this contract?

MR. BUTLER: Yeah. I believe that's correct based on these matters. In fact, they've agreed to withdraw their objection with prejudice and there's also an agreement that should Verizon ever seek to terminate the Verizon contract for convenience pursuant to the terms of the contract, that both the purchaser and MobileAria will be relieved from all of their obligations to Verizon under paragraph 43 of the order. So there's a remedy back to both the estate and to Wireless Matrix if Verizon for some reason were to change its mind. We think this has been resolved on the commercial matter. Our impression is the debtors -- from the debtors' perspective is

that Verizon is supportive of Wireless Matrix' acquisition of these assets and as Wireless Matrix as the go forward purchaser. That some of the issues they had with respect to adequate assurance and future performance were related solely to At Road and not to Wireless Matrix and that this ought to go forward on a commercial basis beyond this day. And in any event, even with all of these various buckets of what I've described to you from the company's perspective, the net amount realized by the estates for the sale of the MobileAria assets will still substantially exceed that which had been the original purchase agreement.

THE COURT: Okay.

MR. BUTLER: So, unless -- there are a number of lawyers in the room today -- that are in court today that are here listening to this presentation. Unless someone thinks I need to say something else about this, I'm going to simply rely on that presentation and on the revised order with the understanding, Your Honor, that we will submit the actual order and the agreement for entry in the next day or two.

THE COURT: Okay.

MS. SHULMAN: Good morning, Your Honor. Carren

Shulman from Heller Ehrman for At Road, Inc. The only reason I'm speaking today is because there's been a number of statements made that were inaccurate about At Road, Inc.'s offer in this case and what happened. And I just briefly

wanted to state since this is on the record that we did not give notice at 10:00 last night. We gave notice substantially earlier. This has been going on for several weeks and we've acted in good faith throughout this process. And what's quite disappointing to us is that up till the last minute we were negotiating in good faith and it appears based on what's happened today that that may not have been the case on the other side, not necessarily with Delphi. So, that's what I wanted to state here today. We'll deal with any allegations made that we consider to be defamatory outside of this courtroom. And I have a copy of our termination letter, Your Honor, if you'd like to see it. We were debating whether to file it with the Court and we need to look at the nondisclosure agreement to see whether we have a basis for doing so. Thank you.

THE COURT: No. I don't need to see it. I'm sure if they're not settled, all the issues pertaining to the termination will be dealt with in an appropriate proceeding, including the issue of damages, which may go beyond the 200,000 and reflect whatever the debtors had to agree to to lock in the only remaining deal.

MR. BUTLER: Yes, Your Honor. And, by the way, just so the record is clear, we received the notice of termination by e-mail approximately 8:00 last night. I apologize. It wasn't 10:00.

THE COURT: Okay. All right. That's fine. I was going to ask what the footnote in Verizon's objection meant when it said it announces its intention that it may terminate the agreement. But I guess that may come up some time in the future, ie., the 180-day termination. But -- okay.

MR. LADDIN: Good morning, Your Honor. Darryl Laddin on behalf of Verizon Services Corporation. Your Honor, I will be brief. I'm not going to go into the At Road discussions. That's not for the Court today and so I don't need to do that. And Your Honor has obviously read the objection.

Mr. Butler correctly stated that we have reached an agreement with the debtors as well as with Wireless Matrix with respect to the assumption and assignment of the Verizon contract. That agreement is set forth in paragraph 43 of the agreement which is a detailed paragraph that covers the terms of the agreement in Schedule 3 to the proposed order. We have reached agreement on all terms of that and as a result of that agreement, we do withdraw our objection.

THE COURT: Okay. So Verizon does not intend to exercise the 180-day termination right as of today?

MR. LADDIN: As of today, that's correct. And that issue is dealt with specifically in paragraph (e) -- 43(e), which, as Mr. Butler explained, states that if Verizon does exercise the 180-day termination right then each of the purchaser and MobileAria should be relieved from all of their

obligations under paragraph 43.

THE COURT: Okay.

MR. LADDIN: Thank you, Your Honor. Any other objections or withdrawn also even before this?

MR. BUTLER: They've been resolved, Your Honor. The objections have been resolved. And I think certainly the notices of withdrawal are actually on the docket.

THE COURT: Okay.

MR. BUTLER: The only thing I didn't mention in the record, Your Honor, is that Mr. Robert Shumaker, who is a member of the MobileAria board of directors and a founding director of the company is present in the courtroom today if the Court had any questions about the board's exercise of the business judgment in accepting this offer.

THE COURT: All right. No, I don't given the lack of objections and the notice. I also don't believe that I need to hear anything about adequate assurance and future performance given that the stalking horse has turned out to be the buyer, although I was prepared that in connection with At Road. All of the contract parties got notice of Wireless Matrix as a potential assignee and no one is pursuing an objection with regard to assumption or assignment so I'm prepared to approve the transaction and enter the order consistent with statements on the record and the draft that I've seen.

MR. BUTLER: Thank you, Your Honor. We'll submit the

final form of order and the final form of agreement before the end of the week.

THE COURT: Okay. Let's take a moment now 'cause we have to dial in Ms. Robbins and the other people on the phone. I'll take a two minute break while we do this.

MR. BUTLER: Thank you, Your Honor.

THE COURT: Five minute break.

(Brief recess from 11:06 to 11:14 a.m.)

THE COURT: Please be seated. All right. We're back on the record in Delphi.

MR. BUTLER: Your Honor, the next matter on the agenda is matter number 40, the supplement to the KECP motion at Docket No. 4419. By filing of the supplement, Your Honor,

the debtors adjourned until the October omnibus hearing all matters relating to the KECP other than the continuation of the AIP program. The continuation -- what's before the Court today is the continuation of the annual incentive program for this period and for the second half of 2006 and for future periods.

One matter, Your Honor, I wanted to note just for the Court's attention, there are seven objectors to this motion, six unions and the lead plaintiffs. I've been able to consult this morning with each of the counsel to those parties other than Mr. Kennedy on behalf of the IUE. There's no one in court today on behalf of the IUE which was unanticipated by the debtors and I think by the other objectors. And I wanted to

bring that to Your Honor's attention at the commencement of the hearing.

THE COURT: Okay. Have we heard anything from him? No? All right. Okay. Well, I read their objection obviously.

MR. BUTLER: Your Honor, what I'd like to do is with the Court's permission, is get the evidentiary record and then deal with the argument. I'm not going to make an opening statement here.

THE COURT: Okay.

MR. BUTLER: With respect to the evidentiary record, Your Honor, there have been identified and in the joint trial exhibit book, there are 24 exhibits, although there's a larger number of exhibits because Exhibit #1 is a incorporation of reference. All the exhibits are from the February 10th, 2006 hearing. There are no objections to any of the 24 exhibits from any parties save the debtors' objection to Exhibit #15 which was designated by the IAM, IBEW and IUOE which was the expert report of Michael L. Wachter from the 1113/1114 matters. But other than with respect to Exhibit 15 which we can deal with either now or later, I'd move the admission of all 24

exhibits into the record.

(24 exhibits which had been marked for identification at the 2/10/06 hearing were hereby received into the record as Debtors' Exhibits 1-24, as of this date.)

THE COURT: Okay. And that's unopposed, I gather?

All right. They'll be admitted.

MR. BUTLER: And then we can deal at whatever point it's appropriate to deal with Exhibit 15.

THE COURT: Okay.

MR. BUTLER: Your Honor, with respect to the debtors' witnesses, the evidentiary record in this case as it relates to witness testimony, we have five witnesses present in the courtroom available for cross-examination and redirect examination in connection with their declarations which have been provided to the objectors and we would present them in the following order: first, the declaration of Mr. Sheehan, John D. Sheehan, which is Exhibit #11; second, the declaration of Nick Bubnovich, the company's expert, which is Exhibit #10; third, the declaration of Deborah Alexander, which is Exhibit 12; fourth, the declaration of Virgis W. Colbert, which is Exhibit 13. Mr. Colbert is chairman of the compensation committee of Delphi's board of directors. And, finally, the declaration of Rodney O'Neil which is Exhibit #14. Mr. O'Neil is the president of Delphi Corporation.

Your Honor, I've conferred with the objectors -- or counsel to the objectors and unless I have this wrong and they'll tell me if I do, but I believe that there is no cross-examination proposed by any of the objectors other than Ms. Robbins who has some questions of Mr. Sheehan and of Mr. Bubnovich.

MS. ROBBINS (telephonically): I don't believe I have any questions for Mr. Sheehan. I'm sorry, I misunderstood Mr. Butler. I thought he was going to be testifying beyond his declaration.

MR. BUTLER: So --

THE COURT: Okay. Is that correct, though, that other than Ms. Robbins with respect to Mr. Bubnovich, no one wishes to cross-examine any of the witnesses on their declarations?

MS. MEHLSACK: As far as we know, as was noted, Mr. Kennedy has not arrived --

THE COURT: Right.

MS. MEHLSACK: -- and we don't know what his position would be.

THE COURT: Okay. All right. Then, Mr. Butler, he should take the stand, please.

(Witness duly sworn by the Court.)

THE COURT: And just for the record, could you spell your name?

THE WITNESS: Sure. B-U-B-N-O-V-I-C-H.

THE COURT: Okay. And just if you can, if you can try to speak near the microphone, particularly since Ms. Robbins is on the phone and it's the microphone that picks up her connection.

THE WITNESS: Yes, Your Honor.

THE COURT: Okay. You can go ahead, Ms. Robbins.

MS. ROBBINS: Thank you, Your Honor.

CROSS-EXAMINATION BY

MS. ROBBINS:

Q. Just a few questions, Mr. Bubnovich. You make reference to the number of executives who have left during 2006. Is it

accurate that you did not know the specifics concerning those executives, for example, where they were each assigned?
A. That's correct.
Q. And in terms of how the incentive plan works, I just want to confirm something. Let's say that the performance for the corporation is twenty-five percent above your target that will free up a certain amount of funds for AIP bonuses. And then I want to compare that to a situation in which you're fifty percent above target. Am I accurate that that would increase the amount of funds available for bonuses?
A. Yes, to the extent the financial performance is fifty percent above the target, as opposed to twenty-five above, a larger bonus pool would be funded.
MS. ROBBINS: Those are my only questions, Your Honor.
THE COURT: Okay. I actually had a couple of questions. So I'll ask them now. In your declaration, Mr. Bubnovich, you say that -- these aren't the exact words but that the AIP supplement is comparable or competitive to

compensation programs of Delphi's peers?
THE WITNESS: Yes.
THE COURT: When you use the term "peers", what do you mean? What types of companies?
THE WITNESS: When I use the term "peers", I'm referring to companies of similar size as well as companies that are in the same industry including automobile supplies as well as just the general automobile industry.
THE COURT: Okay. So that would include companies like Visteon?
THE WITNESS: Yes. I don't know the exact details, for example, of Visteon's plan. What the decla -- what I mean

in that section of the declaration is the overall design of the program with financial targets as well as a maximum adjustments for individual performance, the financial measure that is tied to the internal planning or financial or budgeting process is consistent with the design of the company's peers.

THE COURT: In looking at the design of the programs employed by the company's peers, did you determine whether they have taken into account for setting their targets seasonality?

THE WITNESS: I didn't look at seasonality with respect to any particular bonus plan but it is, I think, true that companies take into account seasonality in determining the performance targets under a plan.

THE COURT: While most of the plans of the company's

peers, or all of them, are they annual plans?

THE WITNESS: Yes.

THE COURT: And would the bonus be paid at the end of the year then or at the end of the fiscal year?

THE WITNESS: Yes. It would be paid shortly following the end of the fiscal year.

THE COURT: Okay. Is Watson Wyatt doing other work for the debtors other than reviewing compensation plans and the like?

THE WITNESS: Yes.

THE COURT: What sort of work?

THE WITNESS: Watson Wyatt is the actuary under the company's various pension plans. From time to time, we have also done other consulting work including health care consulting as well as sales compensation consulting.

THE COURT: Is any of that ongoing now?

THE WITNESS: We are not doing any sales compensation work. I don't believe we're doing any health care consulting, but we are the company's ongoing pension actuaries.

THE COURT: In connection with your work regarding the AIP, are there any agreements or understandings about other work that Watson Wyatt might be doing?

THE WITNESS: Absolutely not, Your Honor.

THE COURT: Okay. I have no further questions.

MR. BUTLER: No recross, Your Honor.

THE COURT: All right. You can step down, sir.

MR. BUTLER: Did Your Honor have any questions of any other witnesses?

THE COURT: Well, you may know this since you're ever involved in the 1113/1114 process as well. I understand from the motion that the targets upon which the second round AIP is based, you are essentially not only vetted with the committee but are the committee's targets is what they viewed as being appropriate, is that right?

MR. BUTLER: Certainly Mr. Rosenberg could answer that. I don't know that the committee would say that they're their targets. They're the company's targets. They were developed based on the business planning process described in Mr. Sheehan's declaration and they were vetted with the compensation committee and with the full board of directors and with the creditors' committee. There was an extensive amount of due diligence about the targets by the creditors' committee and their financial advisors and their compensation advisors. The proposed payment curves that are attached to the order are in fact the curves recommended by the compensation consultant to the creditors' committee which we adopted. And the actual targets became the subject of discussion including a meeting that was held last Friday here in New York, in West Chester, involving the KECP subcommittee of the creditors' committee and the debtors' management team and financial advisors. The

result of all that, Your Honor, was paragraph 3 of the revised order.

THE COURT: With the hundred million dollars (inaudible)?

MR. BUTLER: Where there is -- the question, I think, that the committee had unresolved in its discussions with us was whether or not there were all of the benefits from things being planned for it from transformation that should be excluded from under EBIT DA UG from targets. Because we're not taking adjustments with respect to subsidies or benefits provided by General Motors or from the union concessions or the union modifications being made with respect to any kind of transformation agreements. That whether or not those were completely captured. And their other transformation issues. So it's not just limited to those but other transformation issues that should be, on reflection, appropriately excluded from the target on a reasonable basis. And the committee wanted the opportunity to be able to sort that out. We negotiated with them, concluded that the best way for them to make a reasonable judgment -- and we agreed -- and some of this you have to work on faith here. The company agreed that while we think our targets are reasonable that we were prepared to have the committee make its own unilateral assessment of that up to this hundred million dollar cap based on the discussions between the parties, the KECP subcommittee and the company,

after the fact when all the information is in.

THE COURT: The hundred million dollar cap is on the corporate --

MR. BUTLER: It's on the corporate. Correct, Your Honor. So, for example, if, to use the example, if our actual

performance came in at negative 350 as opposed to negative 411 and the creditors' committee thought there should be a 50 or 60 or 70 million dollar adjustment to the target, that could mean that the EBIT DA UG target would be taken out of the performance payment and there would be no payment 'cause Your Honor previously ruled that at least at the moment you want there to be a cliff at the target level and we've stuck with that. We haven't come back and tried to propose anything other than that. So there's a cliff at target. Then that would impact all of the corporate employees and depending on the percentages that had been negotiated with the compensation experts of the creditors' committee, varying percentages of divisional compensation would be affected because the mix by division changes between corporate performance and divisional performance.

THE COURT: Okay. So the percentages or curves were worked out largely based on the suggestions of the committee's consultants that targets were heavily vetted by the committee and the committee has built in this hundred million dollar adjustment mechanism?

MR. BUTLER: Correct. I mean, I think it's fair to say, if you asked -- the payment curves are in fact the committee's compensation consultants' payment curves. The targets are the company's curves -- or the company's targets having been vetted by the committee to which the committee is now supportive based on the version of the order that's been submitted to Your Honor.

THE COURT: And the targets then are derived from the ongoing business plan review?

MR. BUTLER: Yes, Your Honor. As Your Honor may recall from testimony you've heard in this courtroom, the

company does forecast about quarterly for the -- looking forward and this was based on the three plus nine forecast that was completed in the March/April time frame as we move forward looking forward to the second half of the year.

THE COURT: So are these targets consistent with the business plan underpinnings of the 1113/1114 proposal?

MR. BUTLER: They're consistent, Your Honor, with the steady state aspects of it as it's been updated because we don't get the benefit of either the U or G. EBIT DA UG. That doesn't translate into earnings that can influence these payments.

THE COURT: And you say the "steady state" as it has been updated?

MR. BUTLER: Right. By the three plus nine forecast,

Your Honor.

THE COURT: Okay.

MR. BUTLER: And that's been not only submitted into evidence but it's been widely vetted.

MS. ROBBINS: Hello?

THE COURT: No, I'm just thinking. You can't see me thinking. Maybe that's a good thing. All right. I guess I don't have any more questions then of any of the objectors.

MR. BUTLER: Your Honor, before we go through the objections, we probably ought to resolve the evidentiary record. There was a remaining issue as to Exhibit #15. The debtors objected to the introduction of that evidence because it was -- Ms. Robbins had designated that, I believe -- actually, I guess, counsel for both the IAM-IBW and the IUE had designated that and Mr. Wachter's testimony from the 1113/1114 insofar it was dealing with quit rates for the hourly workers in that area. We don't think it's relevant. We don't think it has any foundation for purposes of trying to tie it to

executive compensation and so we object to it both on a foundation basis and on relevance.

MS. ROBBINS: If I may be heard, Your Honor?

THE COURT: Yes, sure.

MS. ROBBINS: First of all, Dr. Wachter's statement involves quit rates on an economy-wide basis. There is no reference that then it's limited to hourly employees. It

instead focuses economy-wide and industry-wide. So we would understand that by the terms used to have included everyone including executives and management personnel.

I would also point out that the Wachter declaration provides a summary of both the employer's proposals, both the current salary rates for skilled and unskilled employees and the employer's proposals with respect to skilled and unskilled employees. And so it provides a backdrop for understanding the impact of the employer's proposal here for a bonus program in the context of 1113 and 1114, which is, in their reference, by virtually all the unions. Mr. Wachter identifies each of the wage rates and the employer's proposed reduction in those wage rates.

THE COURT: For the hourly employees?

MS. ROBBINS: For the hourly employees. But I think that that is relevant in terms of understanding our concern that it would impact the 1113/1114 hearing. The quit rates, as I said, we understand to apply to management as well as hourly.

MS. MEHLSACK: Your Honor, if I may amplify?

THE COURT: You may. I'm sorry. This is Exhibit 15?

MR. BUTLER: Yes.

MS. MEHLSACK: Just by way of clarification, Barbara Mehlsack for the Operating Engineers. And the IBW, the IAM and the Operating Engineers Locals filed their joint objections and

we filed the exhibits jointly, Your Honor. And the Wachter

exhibit we believe is relevant because Mr. Wachter makes the point that quit rates are further evidence of whether compensation is competitive or not competitive and he compares the hourly quit rates to a number that -- to statistics that DLS produces that are not limited. They are economy-wide manufacturing sector-wide without regard to whether they are hourly employees, salaried employees, executive employees. And our point is that there has been no comparison of quit rates and this program is being justified on a number of different grounds but one of the grounds is a retention ground. And we are concerned about the lack of the sufficiency of the evidence going to the retention issues and to the fact that the debtors offered no evidence to compare quit rates of the executives either to the peer group that Mr. Bubnovich discussed in talking about comparing the overall structure of the plan nor even to the economy-wide or manufacturing-wide rates that Mr. Wachter used. If quit rates are evidence of competitiveness val none of compensation, then we think that that's an issue that ought to have been addressed in more detail and it goes to our objection that the evidence in support of this plan at this stage is not sufficiently particularized on a number of different grounds. And that's why we believe that the declaration is relevant, Your Honor.

MR. BUTLER: Your Honor, with respect to Dr. Wachter's declaration, the union counsel led, in this case, by

Mr. Kennedy, cross-examined Dr. Wachter at the hearing on his declaration. And on page 37 of that, I can just read a couple of questions and answers. Mr. Kennedy asked with reference to paragraph 14 of the declaration which is part of Exhibit 15

that the unions seek to get admitted here. At line 14 of the transcript, Mr. Kennedy says "Is that just a blue collar quick rate or is that for everyone involved in a plant or manufacturing facility?

"Answer: Those are collected as average plant on numbers.

"Question: So, would that apply for instance to salary, to management at manufacturing plants?

"Answer: Actually, that I'm not entirely sure of without checking the sources more specifically, but I think they are but I would need to check the reference.

"Question: Okay. Sitting here today, do you have any information on what the salaried or managerial quick rate is economy-wide?

"Answer: No."

THE COURT: All right.

MR. BUTLER: And I just don't know what the relevance or foundation is, Your Honor, with respect to Dr. Wachter's testimony of 11/13 in the context of this hearing, which is why we objected.

THE COURT: All right. It's just a relevance objection and as far as I'm concerned and I think as far as my

opinion or the Court's concern, they can deal with that by looking at the objection and looking at the other facts as well, including his testimony. So, I'll admit it for what it's worth.

Okay. So do I have anything from the objectors?

MS. MEHLSACK: We have not created an order, Your Honor, but I guess we'll be UAW Steelworkers and then Ms. Robbins for IBEW, IAM and IUOE and then I will follow Ms. Robbins.

THE COURT: Okay.

MS. CECOTTI: Good morning, Your Honor. Babette Cecotti for the UAW. Excuse the slight disorganization. We were, as I say, anticipating Mr. Kennedy's arrival. In terms of the objection of the UAW, and I have read Mr. -- the Skadden response to the objections that have been filed and I'll attempt to take that into account in my remarks.

We are certainly not here to be repetitive of the hearing that took so long before Your Honor in February. However, all of the unions, and including the UAW, have raised the issue of the appropriateness of further proceedings to set bonus opportunities for executives right in the middle of the 1113/1114 proceedings that of course Your Honor is presiding over and supervising.

We certainly do remember and acknowledge the Court's ruling and the comments that Your Honor made with respect to

the similar issue we made at the time. Of course then we were anticipating the proceedings and now we're right in the middle of them. But I would not want the Court to think that we have short memories or short attention spans. We certainly took that very much into consideration but as the UAW has said in its objection that the reality is that the issues that are on the table now between the debtor and the unions, including the UAW, present issues that are simply -- they are very difficult to deal with this, as the Court has heard before, but simply make it even more difficult and complicated for the unions to do what the unions need to do in this case, which is to see if there can be a consensual resolution of all of this. And in order to do that, we need -- eventually, we will need the support of the membership that will need to vote on an agreement if there is an agreement to be brought forward. And, as the Court heard last time, I think once one is in the reality of the situation, including making choices about

whether to take attrition opportunities or stay with the company dealing with information that may be circulating about the company's proposals and the unions' reaction to the proposals, it seems to me that the focus right now should be bringing everybody focused on the same goal, which is to see if there can be a consensual resolution here. And notwithstanding the Court's comments, which again we acknowledge and I think we may have a respectful disagreement with in terms of what it

would take to actually talk to the membership and try to get them to see that perhaps the two exercises are not inconsistent. In the unions' mind they very much are and they very much do present a complicating factor. And I think with that said and as we've laid that out in our objection, I'll just move on to the UAW's other objections.

With respect to the program itself, I think the colloquy that we've just heard with Mr. Bubnovich and the Court's comments with respect to the targets and so forth demonstrate another key problem for the UAW which is the design of the program itself. Even if we could say, and as I think the consultant testified, the features that the consultant used were comparative design features with respect to the pier group. They may well be very laudable features for an incentive program. But I think that, as the consultant also said, the programs are by and large annual programs. And some of the issues that have come up in terms of trying to set targets and hearing now the debtors are trying to lower targets, has to do with the fact that the debtor has determined to make this sort of a two bites at the apple type program. We have two -- we have six month increments for which there will be bonus opportunities provided. Budgeting is certainly not a science. Not being an accountant myself, I can only imagine

the complications that ensue when you try to do something like this, taking a year and trying to split it in half. What costs

and savings and projections are attributable to what -- first of all, which periods of the year, I think the efforts of the committee the first time around to try to figure out what aspects of the company's reorganization restructuring efforts should be excluded took into account the fact that we have here a case that's trying to do a lot at once. So when we have the dash UG, that was the committee's effort to recognize that we have a case here where there's a lot going on where a lot of things could result and find their way rippling through the budgetary process for any number of reasons. I think that if you -- once you then try to parse this into two six month periods, you are simply compounding the problem. And the committee's efforts notwithstanding and the efforts that they have said they will undertake with respect to the hundred million dollars, while laudable and while certainly a step in the right direction in terms of oversight, are simply not enough, at least from the standpoint of the UAW.

So, that we have first of all the six month, six month feature of the program, which we think makes it different than the pier group to begin with; the fact that it must necessarily compound the difficulties of trying to figure out what exactly the incentive measures are going to be in a case where at the same time the debtor is trying to undergo massive labor restructuring changes; it has to deal with GM and other customer issues. There will be a lot going on in this case and

I for one would find it to be a near miracle if at the end of the day one could actually line up what the incentive features of this that actual executives could actually work on and

actually show to be a demonstrable result of their efforts, if that could actually be demonstrated. We think that the process and the type of a case it is and the way the program has been designed simply makes all of that impossible for the Court to be able to have demonstrated with any assurance that the considerable amount of money that's at stake will actually work towards the goal that it's intended to, again, assuming, in a perfect world, that an incentive feature that meets -- the design features that have been set out could actually work as designed.

In addition, we have raised an objection to the debtors' request that this process now simply be allowed, assuming the Court approves it today, to continue without further Court authority. Again, taking nothing away from the efforts of the committee or its professionals, it is simply not enough oversight. The Court ruled in February that the six month AIP at that time was a transaction out of the ordinary course of the debtors' business and we believe that there is really nothing that's been demonstrated that would take it outside of that ruling here today or -- and there's -- simply having the oversight of the committee and the budgetary process does not substitute for the Court's review an oversight. And

we think that to the extent today's program is approved, and we think for all the reasons that I've said it shouldn't be, but to the extent it is, there should not be an effective blank check issued to the debtor even with the committee participation to simply roll this program forward without any further Court oversight. Thank you.

THE COURT: Okay. Thank you.

MR. MORANAVIC: Good morning, Your Honor. Robert Moranavic on behalf of the Steelworkers. I'll be brief. We

echo the comments of my colleague. Noting, in particular, that where we have the membership's requirement to ratify any agreement that would be negotiated between the debtors and the Steelworkers. It becomes particularly difficult to persuade members that it is in their interests at the same time to cut their own wages and cut their own benefits and eliminate jobs while they are seeing executives increase their compensation.

THE COURT: You have to speak a little bit more into the microphone so Ms. Robbins can hear.

MR. MORANAVIC: I'm sorry. So, with that I will conclude my comments.

THE COURT: Okay.

MR. MORANAVIC: Thank you very much.

THE COURT: Thank you.

MS. ROBBINS: Your Honor, if Mr. Kennedy is not there, is there anyone from the IUE there now or should I enter

my appearance.

THE COURT: You should go ahead.

MS. ROBBINS: Appearing on behalf of the IAM and IBEW, Marianne Goldstein Robbins, the law firm of Previanat, Goldberg, Uelmen. And I'm speaking also, to some extent, for the IUOE. Ms. Mehlsack and I did work together on addressing this issue and she will speak for me. I would like to start by pointing out there is a new commitment which deals with transfers to insiders, which, in our view would include executives. The Section 503(c). We think that that's important because it demonstrates that the way in which bankruptcy law is progressing there is a desire established by the statute that if there are transfers to people who are involved in the company in a very high level, there should be a very particularized showing before there are transfers to them. For example, on the issue of retention which has been raised by

the debtors, there is to be a particularized showing that, for example, there is a bonafide offer. And just for a moment, I'm going to point out that in my few questions of the debtor's expert, we do not know, in this case, anything about the reasons for the quit rate for the few executives that have left in 2006, the reason for that. The debtor, for example, has announced the closure of certain facilities. It would not be at all surprising or inopportune if some of those facilities, some of the executives assigned to those facilities sought

other employment. Just as the hourly employees at those facilities are going through attrition and its been noted that their quit rate has increased also. Because those plants are closing. And we have a shrinking foot print that we would expect to see to shrink at all levels. But I think I want to focus about some of our concerns about the change in the target. As we read the Court's prior order, the target, had been a negative operating income of eighty million and now we're holding to 411 million negative as a target. So we have a huge increase in a negative number as being the target for incentives. And I want direct the Court's attention back to Mr. Sheehan's declaration in the 1113/1114 hearing which is at tab 16 in the exhibit book for this hearing. And in that declaration Mr. Sheehan addresses the fact that the performance for the beginning of 2006 was better than expected. And he identifies a number of reasons for that. And attaches very significant numbers to those reasons. He mentions material cost reductions, which were projected at ninety-nine million for the year but fifty-three million just, I believe, in the first quarter. He mentions the fact that there is additional attrition which has saved the company money in its job stake and this was voluntary attrition, at that point people who had

quit. And then he mentions that in terms of the expenses for retirement, they projected -- the company projected for the year 116 million dollars less than an expense. He mentions

attrition of salaried employees. And at this point, he does not mention it from a point of view that this is a negative, but that these are individuals that would not have to be replaced because the company's reduction in foot print. And that's another fifty-five million. And here he is talking about, basically, the first quarter of 2006. And so what we see is that the company's estimates have been unrealistic. And that, in fact, for reasons not related to management's productivity, there had been reductions in costs. And, given that, we would expect even if there is a volume difference, that this would have been taken into consideration in realizing the target did not have to be adjusted to the extent that adjustment is sought. And there was absolutely no consideration given to this. So it really does appear that this is a very unrealistic -- it's essentially reducing what was already an unrealistically low estimate of performance. And one of the points that we made, that I think was questioned in the response to our objection, was that how this would end up involving more money for the bonus program.

THE COURT: Before you get into that, do you dispute that these targets were based on the updated city/state projections which would have taken into account the information that you just went through, the lower costs of various components of the city/state projections. I mean, I understand your argument that you're making that they were wrong once, so

they could be wrong again. But, I didn't quite follow the second point which is that -- I thought I heard you saying that

they haven't really adjusted except for (indiscernible) adjustment dollars.

MR. ROBBINS: Well, Your Honor, and I have to say that I just -- I don't see how they have taken these things into account. And the way that I get to that point, Your Honor, is by looking at what the target was for the first half. In other words, you know, if we saw that the target -- the target for the first half was a much longer negative number, so what we see is that even though we have all these positive things going on, we now have a request for a far greater negative number. A greater loss, if you will. And that makes no sense when you see how the basic statement where 600 million for the first half, we've made a 600 million improvement. And the only adjustment that is specifically referenced in the order, of course, is restructuring. And the items that I mentioned from Mr. Sheehan's earlier declaration, are not involved in restructuring. They are essentially items which occurred unrelated to restructuring as far as I can tell. Mr. Sheehan's declaration certainly doesn't reference any of them as being related to restructuring. And what I look at is the gross numbers, Your Honor. In fact, they're saying everything positive is going on and yet, we need this hugely larger negative number. And I -- you expect that if this had really

been taken into consideration the new number, even with the adjustment for volume, would be similar, it would not be more than 300 million lower. So I guess I do question it. It may be a little bit of black box magic here, but the fact is the target is being reduced. Notwithstanding all the positive things that have been going on which have not been related to management's performance so much as the fact that material costs is going down and it's other expenses have not

materialized the way that they would be expected to. To move on, want to say that this has an impact on the cost of the plan. Because if the target is too low, what would have been a twenty-five percent increase over target becomes a fifty percent increase in target. And that means that more resources are used to fund the incentive plan that really is not acting as an incentive plan but really is a foregone conclusion from what we see previously. I did want to also touch on the impact this has on the 1113 and 1114 proceedings. We realize that the debtor has reached attrition packages with some of the unions that has not happened with the IAM, IBEW or IUOE. The debtor has not been available for those discussions yet. And I think that the other thing that has to be remembered what has not been addressed. And we'd like to believe it's because, perhaps, it will not need to be addressed. But that certainly has not been debtor's position up to this point. Debtor says that they still intend to seek huge reductions in pay. If you

look at -- you know, just as a refresher, in Dr. Walker's declaration, for Steelworkers it's basically a thirty-three percent reduction in pay that is being sought. And it's not just in pay and fringe benefits, the reductions are even larger, particularly, in the area of retirement benefits. And this, of course, is in the context where -- for the IAM-IBEW and a number of the IUOE employees -- all of the IAM and IBEW and many of the IUOE employees, their locations will no longer exist. So, basically, what they have to look forward to is retirement if they're old enough. And those very retirement benefits we're told to continue to be in jeopardy. That the employer's seeking the ability to terminate those retention plans. And that will cause the loss of supplemental benefits. And this in a situation where the employer takes the position that there is no benefit guaranty for these groups. So what we

have here is a situation where you're trying to reach a consensual agreement, which cuts pay, and cuts retirement benefits. And you want to do this in a context where you're saying you know, let's lower the goals for management and increase their pay, at the time that you're asking people to, basically, forsake their retirement and live on a third less pay. That is not the way to get a voluntary agreement, in our view. And if that is the goal, this seems very ill conceived. In straight monetary issues, what we have is a situation where, according to the debtor's, thirty-seven million will go to this

plan. It could be more if the goals are askewed as we believe they are. There's no reference, but last time around the AIP program wants -- the Court ordered it for executives, was extended to other salaried individuals, which presumably would mean even more money would go into bonuses. And, again, part of the problem is will that mean there's not enough money to fund the pension for hourly employees or salaried employees, for that matter. If we're really in these dire straights do we have, or doesn't the debtor have millions of dollars to throw into this kind of program. Isn't the time to address this farther down the road as the rest of the KESP motion, when we will have a better idea on how all of this will sort out. And I wanted to point out one other thing. While the debtor has put into evidence the minutes from the committee's consideration of this supplemental KESP program. There is no reference in that consideration as to the impact this will have on the 1113/1114 proceedings, or on the balance sheet, for that matter. I think that just understates the fact, that this is not the right time to be talking about this. This should be deferred with all other portions of the KESP motion to a later point in time. And finally, we don't see the reason for

approving this program into future six-months periods without the input of other constituencies. This time around, we see a huge change from a goal of minus eighty million to a goal of minus 411 million notwithstanding a 600 million dollar

improvement. In that kind of context, before we see huge variables of this kind, we think this needs the oversight of the Court and the Court's ability to get input from other constituencies.

THE COURT: Okay.

MS. ROBBINS: And I have to thank the Court for allowing me to participate by phone. I know it's not ideal and I really appreciate it.

THE COURT: Okay. That's fine.

MS. ROBBINS: Thank you. Nothing further.

THE COURT: All right. Ms. Mehlsack.

MS. MEHLSACK: Your Honor, we just got a note that Mr. Kennedy, apparently, misunderstood, I guess, the afternoon scheduling of the status of negotiations to be a change in the time of this hearing. And is apparently on his way. I don't know --

THE COURT: I read his objection. It was very clear. I know he's eloquent, but I'm not sure how much he would have added in person.

MS. MEHLSACK: I will try not to be redundant. We thought we had divided up the issues, but I guess we were not so clear with each other. Let me -- this program is being justified, Your Honor, on two basis. One is as an actual incentive program. And the other is as a retention program. And we think that the particularized evidence of need that the

Congress has now put into the code through 503(c), though

clearly not directly applicable, ought to be a guiding principal. And we think that there are severe deficiencies --

THE COURT: I've already got that one.

MS. MEHLSACK: I understand that you -- 503(c), itself, does not apply. Let me just -- Mr. O'Neil has said that this program is a valid incentive program because the performance levels of the debtor and the 600 million dollar achievement over and above projections, are due to substantial productivity achievements. And substantial achievements in both, quality and delivery -- record quality and delivery rates. And Mr. O'Neil says, that they're better than the 2005 record perfor -- and that they are evidence of a record performance since the 1999 formation of the company. Notwithstanding that, Your Honor, the debtor's using, as we understand it, the difference in the 2005 first half versus second half seasonal results to justify the significant declines in negative performance. Quite apart from the fact that the math, Your Honor, just does not compute. That there are multiples of reductions in the negative levels that exceed the difference in the 2005. We don't understand how there can be a use of the 2005 record can be a justification for those significantly reduced targets, when the debtor's saying look, we've achieved through -- and this is an issue we will address in a little more detail -- through management's efforts, we've

achieved 600 million dollars over our operating income projections for 2006. And so -- and that goes, also, Your Honor, to the issue of how this is going to impact on the unionized employees. Because those records, on target deliveries of quality performance, are now being justified as the efforts of management and therefore, the basis for rewarding management for achieving targets significantly lower

than the target that were achieved in years in which productivity, quality, delivery rates were far lower. In fact, as Your Honor knows, from 2001 through 2004, while these incentive programs were in place, the only year that an incentive was paid was 2002. We think there's a huge disconnect, Your Honor, and that hourly employees -- to explain to hourly employees, you've done a terrific job, guys, but you know what, we're giving the executives the credit for the terrific job you've done. And notwithstanding that, we're cutting your pay. That, Your Honor, all other -- your praise for the lawyers and the union leaders ability to explain things to the membership, that's something, your Honor, I really do not believe that any of us can stand up in front of the membership and sufficiently explain to that membership. The second, Your Honor, goes to -- I'd like to address this motion of this being automatic in the future. Because it's related to both the impact and to sound business judgment. Mr. Butler said, the last time around, that he hoped that the union

leadership could explain to their members that this -- that the KESP was carefully debated and that it's a dynamic case that's going to go for six months only. Nobody will be able to tell the union members that the next KESP is carefully debated, because we will have no idea, Your Honor, of what is going to go on. And that's with all do respect for the creditors' committee as fiduciaries. We will not have the information that we need. It will not be aired in public. The second thing is, Your Honor, Your Honor noted at that hearing that, again, that though the six-months experience from January to June 30th might have, and you said small pea presidential value, the fact is that it would be reopened for negotiation and further development. That's not going to happen in the next time around, Your Honor, if this is automatic. Finally,

the debtor said, we exercised sound business judgment about this issue of the impact on 1113 and 1114 and the union members. Because, look, it was debated by the board of directors and you can see it in the minutes. The only minutes that have been put into this proceeding are the compensation committee minutes and there's no reference, Your Honor, in those minutes to any consideration of the impact on the 1113/1114 proceeding and on union members. So for precisely the reasons that were put into the record as evidencing the sound business judgment of the debtor in the first proceeding, we think that Your Honor has to deny the right to have this

program automatically continue. Thank you, Your Honor.

THE COURT: Okay. Thank you. Mr. Etkin.

MR. ETKIN: Good afternoon, Your Honor. Michael Etkin on behalf of the lead plaintiffs in the consolidated securities litigation. We did put in our response, Your Honor, raising two issues. The first had to do with just seeking assurance that the prophylactic measures contained in the original orders would carry forward. And we have received that assurance so that no longer is an issue for us. And very briefly, Your Honor, the second issue relates to something you've heard about and that's the automatic continuation. These types of proceedings, obviously, still remain a lightening rod -- somewhat of a lightening rod in this case. And under those circumstances to not have this fully vetted with parties having an opportunity to be heard and subject to further order of this Court, we just believe, would be inappropriate.

THE COURT: Okay.

MR. BUTLER: Your Honor, I'd like to spend a few minutes talking about the evidence that's before the Court.

Because I believe the evidence is uncontroverted in support of the debtor's limited relief that we're seeking today. I want to start with Exhibit Number 4. And I do want to point out, on this record, Your Honor, all this is uncontroverted. I appreciate and I respect the comments that counsel to the

unions made about their concerns with respect to the program, but they did not introduce a single piece of evidence in support of any of those views. And I think the Court does appreciate but needs to look at, for example, Exhibit 4. Exhibit 4 represents -- and I think it's telling, I won't go through every piece of all the pies, but it does examine that when you're talking about competitive pay, and that's what this case is about, in everything we do, it's about being competitive. Being competitive with hourly workers, being competitive with salaried workers, being competitive with executives, being competitive in our procurement practices. Everything we're trying to do, Your Honor, just approved a motion earlier that we can go back and make sure that the way in which we're dealing with executory contracts. We got the best market rate deals we can get. It's about being competitive. That's what this reorganization is about. And it is uncontroverted and undisputed that, for example, if one looks at the last couple of pages of Exhibit 4. Let's just look at the senior executives for which a lot of these objections are focused. As we sit here today, these executives have seventy-four percent of their competitive -- their competitive pay is unavailable to them. That's the competitive shortfall, that's what the testimony says. And they have -- they're receiving only salary and benefits which represents twenty-six percent of their competitive pay. Assuming Your

Honor approves this, they'll still be missing fifty-three percent of their competitive pay, because the annual incentive opportunity only represents an initial twenty-one percent. More than half of their competitive pay is tied up in the long-term incentive program which is represented in the KESP by the emergence awards program -- emergence incentive program, and the debtors, have again, put that off for another three months. By the time we come to the Court, the earliest time we can now come to the Court on that program, will be October, the first anniversary of our Chapter 11 case. So for our executives, they will be the only people working at Delphi that have had more than half of the available -- of their -- what's supposed to from a competitive perspective, of their payment structure, not available to them for over a year. We understand that. We concluded it's in the best interest of the estate to put that off, and we're putting it off. But this annual incentive opportunities is clearly a competitive and critical element -- essential element of their compensation package. And, I think, that the information that's concluded in Exhibit 4 is important. I also think its important to note here what the testimony was, and we do this to be efficient, and we don't necessarily have witnesses on live, direct testimony speaking -- you mean, be testifying for hours about these things, but I know Your Honor's read the declarations. But I do think it's important to note here, in the record, of the

testimony of Mr. Colbert on behalf of the compensation committee and Ms. Alexander who's the executive director of compensation at the company, who describe the procedures that are going to be put into place about how this program, not only the continuation of the program, but the existing program is going to be administered in determination who actually gets the

opportunities. Yes, the company exceeded its targets in the first half of the year. Yes, there are opportunities available. They're not all 200 percent opportunities, in some divisions its going to be less than 100 percent of the opportunity available to them because they didn't make some of the targets they should have made. Not everybody -- the maximum opportunity is widely divergent for the first half program. But -- those are still opportunities. That doesn't translate, and everyone's going to get that. And, in fact, that's not going to happen. And the testimony, again, uncontroverted, is further demonstration of the reasonable nature of the design of this program. There is an individual by individual assessment, including the compensation committee of the board reviewing all the executive matters of officers of the company's performance to determine whether they should get that opportunity or not. It's available, but will it be awarded? That's a separate business judgment determination that's being made on a case-by-case basis. And, I think, as Mr. Colbert testified, in the evidence, to the fact it is

highly unlikely that the maximum opportunities available under the program you authorized in the first half, Your Honor, are in fact, going to be actually awarded across the program.

THE COURT: The way I read this motion, the maximum amount that will be awarded here is 36.3 million. Is that right? So, if, for example, a particular division exceeds expectation by fifty percent, their share of the 36.3 doesn't go up so that the number exceeds 36.3.

MR. BUTLER: Your Honor, at target it's one level. And then there's a cap of the maximum level and you can't exceed that cap. And, in fact, the way the program is designed, after those opportunities are determined by division and by corporate, for any individual executive that simply

says, this is your opportunity. Then there's an assessment made, should they get that full opportunity? Should they get nothing? Should they get something between zero and the full opportunity? And that is an individual judgment made by the company as to every executive. And what the testimony you have before you here is, for Mr. Colbert on behalf of the compensation committee and Ms. Alexander on behalf of the executive management team is that it is highly unlikely the company's going to use the full amount that has been achieved, because there will be deductions for people who, individually, have not met their individual performance objectives.

THE COURT: Okay.

MR. BUTLER: And I think that's an important point. The fact that because the discussion here is okay, they made thirty-six million, so it's all going to go out the door. That's not going to happen here. All right. And how much will actually be awarded will be dependent upon the company's actual judgment going forward. I think that's an important piece of the evidence. I also think Mr. Sheehan's declaration at Exhibit 11 is important, as well. Because it does explain, I think Your Honor was correct, that the -- that the understanding that these -- this program, second half program, and the targets were developed based on the updated three plus nine forecast, which comprehended the performance in the first half of the year, the actual first quarter. And carry that through, Your Honor's heard a lot of testimony about that in another setting, as it relates to how that analysis went through. And that went into evaluating the target, the negative 411 million dollar target. And one only needs to look at chart 2 at Exhibit 11, Mr. Sheehan's testimony, to understand the seasonality which is dramatic between first half

and second half.

THE COURT: I want to make sure I understand that. The adjustments for the second half of 2006, were they just based on the same proportion as to the proportions for 2005's first half and second half. Or did they take into account the fact that things changed in the first half of 2006 and we

should probably have proportions a little more updated for this.

MR. BUTLER: Your Honor, the three plus nine forecast wasn't adopted and wasn't developed in any (indiscernible), as a compensation forecast. The three plus nine forecast is a regular routine forecast that's put together every year --

THE COURT: I'm just talking about the seasonality adjustment. Does that reflect the 3.9 -- I'm sorry the three plus nine forecast? Or does it just reflect just performance in 2005?

MR. BUTLER: No. The three plus nine. What happens is -- the fact that there's a difference in -- the fact -- there was no special seasonality adjustment made for purpose of the KESP targets. The fact is, that the negative four-eleven falls out of the three plus nine forecast. Because the second half, the company loses more money than it does in the first half. And that's a result -- and Your Honor only has to look at that empirically, you know we just finished a summer shut down in the second half of the year, Your Honor. And the testimony that's in the record, describes the automotive change over, the launch of new models, the productivity issues that Mr. O'Neil goes into. But it's important to understand that targets were not selected for compensation. I think that's an important element here. The KESP targets are derived from the three plus nine forecast which was developed after looking at

the actual performance in the first quarter of 2006 and looking at what changes ought to be made for the balance of the year in light of each of the elements of that performance. And then, ultimately, when we got to the KESP for the second half of the year, the target was then derived from that number. There were some adjustments made as to North American GM volume and then it was reviewed with the creditors' committee. And I think, it's undisputed in the record, that this company will perform, what will generate less operating income in the second half of the year, than it does in the first half of the year. And that's what Mr. Sheehan's testimony is, that's what history tells us is the case. And there's no reason to believe that that will be any different this year than last year. But it's not as though, once we got the KESP targets, we said oh, gee, let's make another seasonality adjustment. No such adjustment was made. It was derived strictly from the three plus nine. The other, I think, important point to testimony, in addition to Mr. Bovnovitch's testimony about the competitiveness of this. And I do take issue that this is presented to Your Honor as a retention program. I think, Your Honor, in your opinion, previously acknowledged that there are retentive aspects of this, in your own assessment of this program. But this program has been presented -- has been developed as an incentive program. There's no stay to pay element, there's no guaranteed compensation here. This is an incentive program which is an

interval element of one of the four key elements of competitive executive compensation. But I do think it's also important, Your Honor, to take note of the first half of the year and of Mr. O'Neil's testimony in Exhibit 14. And this is not Mr. O'Neil saying -- I do need to respond to what one of the

counsels suggest, this is not Mr. O'Neil saying, oh gee, 411 executives out of a 185 thousand people are the only people that made a difference in the company. Nobody's suggested that, nobody's said that. There's nothing in this record that would support that conclusion. But it's also true, that these 411 executives, together with some of their other colleagues around the globe, managed a twenty-five, twenty-eight billion dollar enterprise, with somewhere around 180 thousand employees. And it is, frankly to me, as a practitioner in this restructuring business, it is noteworthy, if not remarkable that in the largest manufacturing restructuring case in history, this company, all of the people in this company, everybody associated with this company has been able to operate in the first period of this case without any material disruption. And there's a lot of stakeholders to be congratulated for that. There's a lot of employees to be congratulated. But at the end of the day, is that a factor that should be taken into consideration in the compensation of the executive team? There absolutely should be, without apologies. The fact of the matter is, this company has over-

performed in the first half of the year. It has created more value than existed before, or lost less in this case because we're still going to lose two billion dollars this year. But it has created more value and certainly shored up the company's liquidity in a way that is different than what had originally been anticipated. I'm not going to address the 1113/1114 arguments here. I know we'll be dealing with all of this at that time. But this does not -- the performance in the first half of this year, does not change the requirement to transform Delphi to a competitive enterprise. And the measure is competitiveness and we'll be able to address that in all aspects of our business in each of the contested hearings we

need to deal with in this case. And we will carry the burden and demonstrate to the Court why the need to be competitive requires us take various actions. But in this hearing, which deals with executives and with the uncontroverted evidence here, Your Honor, we need to at least address part of the gap in competitive pay as the evidence indicates by at least continuing the annual incentive program. I do think its noteworthy here, and without, in any way, taking away from the comments made and the objections raised and the concern raised by the unions, that aside from the limited objection of the lead plaintiffs, no other creditor in this case -- no other stakeholder in this case is taking issue with the continuation of this program, including the creditors' committee or the

equity committee. Either the official committees or the ad hoc committees or anybody else. That is different than last time. And I think its important that the Court take that into consideration, as well. In terms of any other specific comments, I think, Your Honor, most everything else that was raised in this -- in the objections of the oral argument from the objectors, Your Honor, I think has been addressed either by the uncontroverted evidentiary record, or by our omnibus reply.

THE COURT: Okay. I have in front of me the debtor's motion for approval of a supplementary or separate to their annual incentive program for their executive workforce, that's sometimes referred to the supplemental AIP. The debtors determined, I think appropriately, in consultation with various parties of interest, originally in the early spring to seek approval of only the first six months of an AIP. Which was granted in February of this year, after a lengthy evidentiary hearing. There were no promises or understandings with respect to whether the AIP would continue for the next six months of

2006. And that's why we're here today. At the hearing on February 16th, I set forth what I believe to be that proper standard for reviewing the motion of this kind and I continue to believe that's the proper way to consider such a request. I note here, that unlike with regard to the first application, the only objectors are the debtor's six unions. They have raised some of the same objections that they've raised before,

although, obviously within the context of this revised or supplemental program. The remaining objection, which is by the lead plaintiffs in the securities litigation with the debtors, I believe, has been addressed inclusively by the debtor's response and commitment. Except as expressly modified in the proposed order. The original order approving the first half of the AIP would continue to govern including February 10 of that order which has the protective language that the lead plaintiffs are particularly concerned about although others were as well. The remaining piece of the lead plaintiff's objection is sitting as one of the objections raised by each of the unions. Which is an objection to the debtor's request that for an OSI that goes under the official creditors' committee, that it not be required to seek court approval with respect to future rolling forwards of their annual incentive -- incentives for 2007. I'll address that at the end of my ruling. The objections raised a number of issues which I'll address a lot them, although, not necessarily in the order of importance. The first issue raised by the unions, however, I believe, is the most important issue with respect to this motion. And one that I've considered carefully, in light of the fact, a lot of business judgment as well as proper to a Dallas judgment and also the judgment of the various union and constituency such as the two official committees. That objection is that approval of this supplement to the AIP will be extremely

counterproductive given the present existence of the ongoing negotiation between the debtors' and the unions with regard to very serious proposed modifications of their collective bargaining agreements as well as under Section 1114 of the bankruptcy code to benefits, retiree benefits. Those modifications clearly were prepared for various significant reductions in compensation and benefits for the union workers. It's argued with some force that the simultaneous approval of an annual incentive compensation program for the second half of 2006 is inflammatory to the union workers who are not only not getting the opportunity for a bonus but also are being asked to make very significant sacrifices on a consensual basis. But in addition there's an obvious backdrop of litigation under Section 1113 and Section 1114 here, whether the Court must evaluate other things the relevant measure of sacrifice or gain or whatever other opportunity to use of other constituents in the case including, of course, salary workers. I think that argument must be viewed in the particular context of this motion, however. Which is one that seeks approval of an annual incentive program, which as Mr. Butler points out, is one of the four elements of executive compensation. The debtors' executives for the second half of 2006 would have only, if I approve this motion, the first two elements of executive compensation, salary and benefits. The debtors have not (indiscernible), appropriately so, to prove settlement, which

potentially is meaningful. But also it's very clearly tied to the overall restructuring of the debtors obligations as well as business. That is long term (indiscernible). That leaves this third element which I view, if the facts support it, that's

more akin to maintaining the business and the growing it in normal course as opposed to having relayed without all of the constituencies and businesses restructuring. And if it is properly tied to reasonable projections of the ordinary course of maintenance and growth of the business. So that it is tied to reasonable performance. I do not believe that it should be viewed as inflammatory, but rather as a reasonable incentive program and be providing that it's consistent with such programs for the debtor's competitors. The evidence supports that conclusion and as importantly has not been rebutted with the contrary evidence. That this is not a competitive program tied to reasonable projections that the debtor's using in all of their business building purposes and not solely, if at all, prepared for anything other than that. The facts here, therefore, distinguish this motion from the motion that was put forth the Court in the U.S. Airways case at 329 BR793 Eastern District of Virginia Bankruptcy Court, 2005, in a number of important ways. There the court was asked in the context of ongoing waiver negotiations to improve key employee retention and severance program that raised in my mind, and I think in the Virginia Bankruptcy Court's mind very different issues.

Not to the operation of the business but to the outcome of the case. Moreover, the targets here, their performance and opportunities -- the performance targets tied to opportunities (indiscernible) with the creditors' committee and do appear to be reasonable in light of how they were prepared. They're tied to the steady state operation of the business. And, in fact, (indiscernible) daughter who makes it clear, if it was that excluded from the financial measurements upon which the executives have the opportunity and forbodeness are the informational results regarding the union, GM and up measures that the debtors were taking that are a little separate part

program of the business in that way. So it seems to me that on the side of whether this is fair the offer of management, I conclude based on the record, including my own questions to Mr. Marcovich that it's six-month AIP, how it was prepared, with reasonable measures to avoid conflicts of interest. And based on effective third-party betting including by the committee. And as far as whether it is fair as to the hourly workers, of course, the issue of an 1113, if and that for another day. And I'm sure that I will be asked to consider, and will consider whether in the context of what was being asked of the unions, if will get to relitigation under 1113 is fair in light of what fashion its received. However, in the interim, I don't. And I think this was aptly stated the (indiscernible) off this motion (indiscernible) in his programming. And important and

consistent with the ability of the debtors to be competitive. I believe with that ultimately is brunt of the focus for what the union negotiations as opposed to the 1113/1114 litigation. Again, and I find that this is the case with the motion in front of me. This is not a detention of severance program which raises for me more troubling issues and then you got the middle stages of a bankruptcy case. It's also a blueprint that very clearly provides for individual by individual view. (Indiscernible) opportunity to obtain incentive payment if the targets are there. In addition, unlike the U.S. Airways case, it does not come in the context of whether the Court has already imposed, as the Court did in U.S. Airways a very substantial interim modification of the collective bargaining agreements, which is obviously not the case here. So I understand that in the context of a union vote on a potential settlement with all of the concessions that the debtors are seeking. Therefore, in negotiation of those concessions, one

could (indiscernible) exploit the notion of (indiscernible) but I continue to believe that when it must work, or can't work at the actual issue at stake. (Indiscernible) here in the context that is treatment of the managerial constituency and the (indiscernible) of the constituency. The other attritions, I guess, are (indiscernible) to my conclusion that this would based upon objective and these are the criteria of attrition. I don't believe that the debtors should now be penalized for

having signed it to the last (indiscernible). Approval of an AIP in two steps, it seems to me that the EBITDA and OBATDA measurements are the measurements that can be made accurately. They clearly will be some discretion in terms of the backing out of this (indiscernible) savings. But given the equitable committee and ultimately the role of the Court, it seems to me that the executives are taking the risk here as opposed to the estate. Also, in a provisional (indiscernible) are not viewing this as a retention package approach. I have essentially discounted the evidence submitted by the company with to (indiscernible). Because I think that ultimately this will have evolved, it is intended to keep people working. I'm sure if you can do it again in terms of what it takes to insure that his vendors are competitive against their pears. I have always had a problem accepting situations where people who are legally working themselves out of a job in measuring retention programs and (indiscernible). And I believe that there are so few factors as to why something can be a advised to stay or not and whether they should be. Then I'm generally much more comfortable with doing it through incentive programs than retention programs. And this is not accepting. It seems to me that if, in fact, a debtor has a separate bonus structure, it's senior executives that leave unless they're working themselves out of a job. They should understand the issues of staying or

not is one that they have to decide on their own in light of

their sense of fair with their families, but to all the creditor shareholders and other constituencies of the company that leave. So again, in light of whether it's competitive and supported by record, that indicates that it is and represents used in the business (indiscernible) and somehow (indiscernible). The last issue is whether, subject of course, to the creditors' committee review that commitment. The future of an AIP program should be one that's subject to Court with you after notice to parties-in-interest. I could pass on these two lines on this point. As I noted at the earlier hearing, when a Court is reviewing whether I'm close to being a normal personnel and salary decision. I think it's a foot print to -- I give quite a bit of deference to debtor in possession. Particularly where its official committee is pulling it's proper
oversight (indiscernible). On the other hand, we are in the context of extremely sensitive and extremely important negotiations with the (indiscernible) litigation. Which mean, the debtors and their unions. Moreover, notwithstanding my earlier and the active and responsible role of the creditors' committee, I also observe that, of course, the debtors far exceeded their targets for the first six month of the year. And while I am satisfied the targets for the next six months are reasonable, in the track of another instance of gladly exceeding those targets. I respect the other parties of

interest with (indiscernible) with the future. So, while I recognize that having another hearing like this provides some disruption in our (indiscernible) for the company, it seems to

me that at least while negotiations and relegation regarding the unions are let go, it's better to try for a continued review to the parties of interest. My hope is that that the picture will turn clear and the debtors can -- they have with their present operations move on to a more normal steady state. Also if you're going with regard to personnel qualifications as well. But that isn't the case today. To the contrary, this motion up it's again, that even though it appears that the debtors (indiscernible) employees, union and non-union are operating at a higher level. Particularly, for (indiscernible). If that is the case, they're still projecting losses of approximately two trillion dollars. That to me indicates that debtors have a lot more to do to apply to their business. And until that picture is clearer I (indiscernible) very significant (indiscernible) to unions. And I think that it is appropriate for the debtors to continue to have to go through this process with regard to future problems like this. So, I'll approve the motion with the exception of the provision that states that no further members would be given.

MR. BUTLER: Thank you, Your Honor. Based on the order that's been agreed with the committee, will the Court simply make that change and enter the order we submitted. Or

do you want us to submit another order?

THE COURT: Well --

MR. BUTLER: I just don't want to delay the process.

THE COURT: Since you -- the committee worked on it, I think it's probably worthwhile for you all to do it, don't leave it up to me.

MR. BUTLER: We're meeting again tomorrow, so we'll get something over to the Court tomorrow.

THE COURT: Okay. Thank you.

MR. BUTLER: Your Honor, the next matter on the

agenda is matter number 41. This is NuTech Plastic Engineering Inc.'s lift stay motion. It's filed at docket number 4436. It's been contested by the debtors. We filed an objection docket number 4559. And counsel for NuTech is here to present their motion.

MR. TISDALE: May it please the Court. Good afternoon, Your Honor. My name is Douglas M. Tisdale, T-I-S-D-A-L-E, of the law firm of Tisdale & Associates, LLC. With me in Court today is Steven A. Klenda, K-L-E-N-D-A, of our office. We represent NuTech Plastics Engineering. We're here today, Your Honor, for the preliminary hearing on NuTech's motion for relief from stay, that's docket number 4436. For the purposes of this hearing, Your Honor, we would incorporate here is our proffer of evidence, the evidence in the argument in our motion papers. Including our memorandum of law and the affidavit that

we had of J.A. Schwartz, Esquire, the trial counsel for NuTech in their state court case, and the attachments thereto. Your Honor, I noted on the agenda that our reply that we filed yesterday, was not indicated on the agenda. But I am informed by your court staff that our reply was received by the Court.

THE COURT: That's right.

MR. TISDALE: Then, Your Honor, I won't tender a bench copy that I had just in case the Court did not have one. Your Honor, in 2002 NuTech filed a lawsuit in the Genesee County Circuit Court --

THE COURT: I don't think you have to go through the facts. I have a couple of basic questions.

MR. TISDALE: I'll be happy to answer them.

THE COURT: What I didn't really understand here, whether Delphi's liabi -- claim liability is derivative of GM's liability to your clients. Is it derivative or is it separate.

It's just not clear to me.

MR. TISDALE: It's a breach of contract case, Your Honor, as to both parties. They are, in fact, related. Delphi's is not one of a fiduciary or, as one who would stand in the place of. However, GM, we are informed by debtor in its responsive papers, would intend to assert an indemnification claim against Delphi. But each of the parties separately contracted with NuTech Plastics.

THE COURT: I noted that trial court that invited the

filing although not necessarily in light of the stay. The Judge gave you opportunity to proceed just the against GM, but not against -- not to keep alive a claim against Delphi. If I feel approve a RICO on that which is that I would make it clear that the -- is this in Michigan?-

MR. TISDALE: Yes, Your Honor.

THE COURT: The Michigan Court would not try the case twice. And if it wasn't resolved consensually by Delphi, I would try the matter vis a vis Delphi. Do you think it's worth taking a stab at that -- because the debtors are prepared to let it go forward as against GM.

MR. TISDALE: I understand that, Your Honor.

THE COURT: It would seem to me that the trial court would understand if it didn't want to conduct two different trials. But I don't think it would have to. In fact, it seems to me, particularly -- and this might be the case given the indemnification claim that's asserted, Delphi's liability is largely a derivative of GM's. That GM would defend aggressively, Delphi can watch that from the sidelines. And then as debtors often do, decide what to do as a result of a trial.

MR. TISDALE: Your Honor, I understand the Court's thinking on that. And I appreciate that. Because, among other

things, we have specifically requested that the alternative relief, or at least, if you will, the minimal relief to be

accorded is that we have a clarification for the benefit of the Michigan State Court which does not typically deal with bankruptcy issues to the extent that this Court does. That said, Your Honor, I don't want to be seen as abandoning an important point here, which is in a case where discovery was completed. In fact, two years before the trial was set. And seven months after the dispositive motions had been determined finally. And unfortunately for us, the only thing that intervened was six weeks before trial, this case was filed. That, Your Honor, we believe, is a telling fact under the Sonix analysis. And we believe, that as a practical matter, when the Court looks at the totality of the circumstances under Sonix is -- and we've outlined the factor, and I won't repeat them all here. But certainly in the totality of the circumstances, Judge, we would respectfully assert that not just a compromise solution, i.e., of allowing us clearly to go ahead against General Motors and making it clear to the Michigan Court wouldn't have to do a retrial for purposes of Delphi's liability at some future point. That may be a nice compromise the debtor would propose, but Your Honor, we don't think that its justified under Sonix.

THE COURT: Well --

MR. TISDALE: We think that relief is required.

THE COURT: Let me change direction your direction a little bit. What about the pre -- the debtor's response that

GM has indicated that if the trial is going to go forward parties for both Delphi and GM they're going to have to get new

counsel. Because right now, this is the same counsel defending both entities. Is that going to slow things up?

MR. TISDALE: Well, Your Honor, to the extent that one can say discovery was completed, dispositive motions were filed, argued and lost by the defendants, that new trial counsel coming in would have essentially a pre-packaged case. Every lawyer who approaches litigation, when they have to step in before trial, and it happens to all of us from time to time, knows that there is some catch up work we have to do. But the case has been prepared for trial, it was ready for trial, it was on the eve of trial. And therefore, any new counsel that would come in would, of course, ask for an appropriate period of time. But, Your Honor, not the kind of delay that we would otherwise experience here in these proceedings. There is, under the rules of judicial economy and an expeditious and economical resolution of all of the issues. A forum sitting there, ready, willing and able to hear the entirety of the case.

THE COURT: It really would be in a month and half, would it.

MR. TISDALE: At that point, Your Honor, I would assume that it wouldn't be September, which is the trial date that we have heard from our trial counsel and is submitted into

evidence in before this Court pursuant to the affidavit of Jay Schwartz. That said, Your Honor, the case has the longest history in the Genesee County circuit court in terms of not having to go to trial, having been filed back in 2002. And so, clearly, Your Honor, at this point a speedy trial would be available and new counsel, I think, would appropriately be expected to come up to speed. And, I think, General Motors can find a lawyer in Detroit.

THE COURT: Okay. Let me ask you. Given that

discovery is complete, is there really an issue with the gentleman, the CO. I mean, he's been deposed.

MR. TISDALE: Yes, Your Honor. The difficulty is though, now we have to have a trial. And we appreciate the offer that was made by debtors. That, in fact, just do a preservation deposition. Your Honor, a preservation deposition is no substitute for the crucible of trial. The circumstances and developments that occur at trial are such as to require that the jury, the fact finder who will hear this matter, see that witness and judge the credibility and the weight of that witness.

THE COURT: Well, I'm sure we can videotape.

MR. TISDALE: Your Honor, I know we can video tape, that's not the same as judging in person the credibility and the weight to be accorded the witness. And we submit that it's a prejudicial impact on us. And when balancing the harms, as

the last factor Sonax would require, we think that that particular balance harms us and is not fair.

THE COURT: Okay.

MR. TISDALE: Your Honor, if I can, just in summary. Very briefly, as to one thing. We know the Court's been very patient today with a number of matters and I apologize. But it is an important matter to NuTech. And we do want to make certain that the Court understands that the relief that we have sought, because there was comment made by debtor's counsel in their response, the relief that we seek is, of course, limited. I believe the form of order that was submitted to the Court was perhaps a little broader than might ordinarily have been the circumstances.

THE COURT: It's not for enforcement but for solely for purposes of liquidating the claim.

MR. TISDALE: Exactly, Your Honor. The Court understands that and we assumed the debtors understood that as well. But it's clear to all of us, that in fact, it's solely for purposes of liquidation. And, Your Honor, very simply put, the most central factor, under Sonax, which after all began with Curtis, Judge Allen's opinion out of the District of Utah. Which as to the point about being ready for trial began with Judge Brumbah's decision in Feedler in Colorado. When Judge Brumbah indicated that if the case is ready for trial, that's a central factor. And, Your Honor, that's the one that Congress

chose to comment on in the legislative history, which we pointed out to the Court in our reply as well. That factor, Your Honor, is a heavy factor. Distraction is always the claim of every debtor. When I was debtor's counsel in the Gillette Holdings, Your Honor, getting up in the morning was a distraction, going to bed at night was a distraction, anything is a distraction. But that doesn't interfere with the administration of the case. They've got separate trial counsel, they can proceed with this case without being prejudice and without being unduly distracted from the other significant matters that they have before them. Under those circumstances, Your Honor, we suggest that the breathing room that they ask for is fine. We gave them that. But we don't have to give them an iron lung.

THE COURT: Okay.

MR. TISDALE: Thank you, Your Honor.

THE COURT: All right.

MR. BUTLER: Your Honor, our point in this, I think, is simple. We are -- I don't think this case, ultimately, is going to be tried in Genesee County. Because if Your Honor lifts the stay, it's not clear to me that we won't exercise our removal rights, which have been preserved with respect to this

particular litigation. There is new trial counsel that's going to have to be obtained for General Motors. I don't think this meets the Sonix factors, although discovery has been completed.

We do think that the stay should be modified for the limited purpose of preserving Mr. Mailey's deposition through a video deposition. And there are lots of cases in which videotaped deposition is admitted in trial when the declarant's unavailable -- a witness is unavailable. And seeing as they've made the point, we do think the stay should be modified to permit that to go forward on an expeditious matter so that the testimony is not lost. If that relieves the concern, then that ought to be taken care of. But aside from that, Your Honor, this is a garden variety breach of contract claim. All right. And, you know, our claims bar date is at the end of this month. We're going to begin to assess what we should be doing in connection with claims administration. Your Honor's already pointed out, that this Court, unlike some of the other lift stay matters have been before the Court, this Court is competent jurisdictionally and otherwise to try this matter, if it ever has to come up in a disputed proof of claim. And this issue can be dealt with.

THE COURT: Well, your response said that alternatively be okay to lift the stay to the extent it applies, in we will not or doesn't apply, to let them go against GM.

MR. BUTLER: Your Honor, I never thought it applied to GM to begin with.

THE COURT: Well, there's no indemnification claim.

So maybe they're being character -- but I don't think it does

either.

MR. BUTLER: No issue of that, Your Honor.

THE COURT: I mean, it's not uncommon for the debtors to look at the results of litigation even though their not specifically binding and then make decisions about how to settle in the light. Particularly if there is joint liability in the debtor as everyone knows has all sorts of issues that it's negotiating with GM. This could lead to another one.

MR. BUTLER: There's no question about that either, Your Honor.

THE COURT: I understand that this is -- if everything goes further would be set for trial some time in September. Given my statement about GM getting new counsel, I think it probably wouldn't be set for then. Counsel I'd like the parties to work together on -- at least considering an order that would make it clear to trial court that you really have to make one trial and that would be as between the plaintiff and GM. And the claim that the plaintiff has against Delphi would be dealt with in the bankruptcy case and if the Court still has a problem with that, and I don't think it would, I'll certainly retain this again.

MR. BUTLER: We'll work on that order. In the interim, assuming we work it out with counsel, I would propose that we submit an interim order that would modify the stay

immediately with respect to the declarant who's ill.

THE COURT: Well, I don't know how ill he is. If he's well enough to at least, be testifying sometime in September, so rather than brining him up to a deposition right now, maybe you can consider that, in the interim. If he's going to testify, if this works out the day of the trial in September because GM would not need to hire new counsel, he'll testify to that and you'll have that the benefit of that

testimony. That's something to consider if this is delayed.

MR. BUTLER: So should we set this -- continue this to the next omnibus hearing, Your Honor?

THE COURT: Yes.

MR. BUTLER: And we'll work on that order and resubmit.

THE COURT: Right. Okay.

MR. BUTLER: Thank you, Your Honor.

THE COURT: Okay.

MR. BUTLER: Your Honor, matter number 42, the last number on the omnibus docket is the status conference in the adversary proceeding for L&W Engineering Company. And my colleague, Mr. Hogan, is responsible for handling that adversary and will handle this conference.

THE COURT: Okay. I think their counsel is on the phone? Is that correct?

MR. HEILMAN: Ryan Heilman of Schaeffer & Weiner,

PLLC on behalf of the plaintiff L&W Engineering and Telsac.

THE COURT: Okay.

MR. HOGAN: Good afternoon, Your Honor. Al Hogan, on behalf of the debtors. Your Honor, this agenda item relates to an adversary proceeding against the debtors. That is proceeding number 06-01136. The plaintiffs in the case, as counsel indicated, is L&W Engineering a subsidiary of Southtech LLC. To this point, what has happened -- and this is a pre-trial conference. To this point, Judge, what has happened is that plaintiffs have filed their complaints, the debtors have filed their answer, affirmative defenses and counterclaims. The plaintiffs have responded. Your Honor, at this point we believe we have dispositive motion under Rule 12(c). I discussed this with counsel for the plaintiffs. The plaintiffs

also believe that they have a dispositive motion of some sort. And what we're asking for today is the entry of an agreed scheduling order setting a briefing schedule and hearing at the September omnibus hearing.

THE COURT: Okay. And the underlying issue whether it counts as a claim or counterclaim is whether they set a lien on certain property.

MR. HOGAN: That's correct. The nature of the complaint is to determine the validity, extended prior to the liens under certain Michigan statutes that the plaintiffs have identified.

THE COURT: Okay. So you agreed on a briefing schedule?

MR. HOGAN: We have, Your Honor. It's contained in the proposed scheduling order.

THE COURT: All right. And so when would these be heard by me.

MR. HOGAN: Our proposal is at the September 14 omnibus hearing would involve briefing -- response and then reply briefing, on August 9th, August 23rd and September 6th, for hearing at the September omnibus hearing.

THE COURT: All right. And again, it's a motion to dismiss, it's not an evidentiary hearing?

MR. HOGAN: Our hearing's a 12(c) motion based on the pleading and I don't understand plaintiff's counsel to be offering evidence in connection with their dispositive motion but claim to --

THE COURT: It's not a summary judgment motion?

MR. HEILMAN: Ryan Heilman, again. I expect that motion will include other documents outside of the pleadings it will be summary judgment motion.

THE COURT: Well, if it's a summary judgment motion,

then you're going to have to file your statements under Rule 7056 and the like. I'll have your respective statements on that. That should be put into your scheduling order if you haven't done that yet.

MR. HOGAN: We will, Your Honor.

THE COURT: Okay. So, I'll enter that once I get it.

MR. HOGAN: Okay. Thank you, Judge.

MR. HEILMAN: Thank you, Your Honor.

THE COURT: Okay.

MR. BUTLER: Your Honor, that completes the agenda for the July omnibus hearing.

THE COURT: All right. So I'll see you all at 2.

MR. BUTLER: Yes. Well, chambers conference at 2 o'clock.

THE COURT: Okay. Thank you.

MR. BUTLER: Thank you very much.

(Whereupon this hearing was concluded at 1:13 PM)

I N D E X

T E S T I M O N Y

WITNESS	EXAMINATION BY	PAGE
Nick Bubnovich	Ms. Robbins	59

E X H I B I T S

DEBTOR'S	DESCRIPTION	PAGE
1-24	24 exhibits which had been marked at the 2/10/06 hearing	56

R U L I N G S

DESCRIPTION	PAGE	LINE
O'Neill Lift-Stay Motion granted	23	1
Motion authorizing debtors to enter into agreement with A.T. Kearney approved	29	2

R U L I N G S, cont'd

DESCRIPTION	PAGE	LINE
Motion of H.E. Services Company and Robert Backie for relief from the automatic	41	7

stay denied		
MobileAria's	54	22
sale motion approved		
Supplement to KECP	105	21
motion approved		

C E R T I F I C A T I O N

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

_____ July 21, 2006
Signature of Transcriber Date

Lisa Bar-Leib
typed or printed name